

Hastings Race and Poverty Law Journal

Volume 13
Number 1 *Winter 2016*

Article 2

Winter 2016

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Recommended Citation

Marc-Tizoc González, *La gran lucha: Latina and Latino Lawyers, Breaking the Law on Principle, and Confronting the Risks of Representation*, 13 HASTINGS RACE & POVERTY L.J. 61 (2016).

Available at: https://repository.uchastings.edu/hastings_race_poverty_law_journal/vol13/iss1/2

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La gran lucha: **Latina and Latino Lawyers, Breaking the Law on Principle, and Confronting the Risks of Representation**

MARC-TIZOC GONZÁLEZ*

Introduction

Chicana, Chicano, and Mexican American law professors are rare in the United States.¹ Although Michael A. Olivas began to teach law

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1. See Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 CHICANO-LATINO L. REV. 117, 129–30 (1994) (“[O]f the 94 [Latino or Latina law faculty in the United States in 1992-93], 51 are Mexican Americans, 17 are Puerto Ricans, 17 are Cuban, and the remainder are of ‘other’ Latino origin.”). Compare ASS’N OF AM. L. SCHS. 2008-2009 STATISTICAL REPORT ON LAW FACULTY, RACE & ETHNICITY 11, 16 (2009) (reporting 334 Hispanic/Latino law professors in the AALS Directory of Law Teachers), with Meera E. Deo, *Looking Forward to Diversity in Legal*

in 1982, three decades after the first Mexican American law professor (Carlos Cadena in 1952),² Professor Olivas holds the distinction of

Academia, 29 BERKELEY J. GENDER L. & JUST. 352, 356, 358 (2014) (explaining that the AALS stopped publishing law faculty demographic data in 2009 and reporting 337 Hispanic/Latino law faculty, out of a total of 10,965 U.S. law faculty, in the last reported year of 2008-09); but see Miguel A. Méndez & Leo P. Martínez, *Toward a Statistical Profile of Latina/os in the Legal Profession*, 13 BERKELEY LA RAZA L.J. 59, 75 (2002) (noting the discrepancy between the 140 Latina/o law professors, not including administrators or visiting clinical law professors, counted by Professor Olivas in 2001, and the 241 full time Hispanic faculty members counted by the AALS for the 1999, and explaining the discrepancy from the fact that the AALS included the Latina/o professors at the three Puerto Rican law schools). Because more recent AALS and more detailed information is not publicly available, one can only speculate at the current number of law professors who identify with particular Hispanic/Latino subgroups. Using Professor Deo's 337 figure, and assuming *arguendo* that the proportion of Mexican American law faculty in the United States remains the same as it was in 1992-93 (about fifty-four per cent of the Latino total), which seems unlikely, there would have been about 182 Mexican American-identified U.S. law professors in 2008-09, who would constitute about 1.6 percent of law faculty in the United States.

2. See Michael Olivas, *Hernandez v. Texas: A Litigation History*, 209, 216-19 in "COLORED MEN" AND "HOMBRES AQUÍ": *HERNANDEZ V. TEXAS* AND THE EMERGENCE OF MEXICAN-AMERICAN LAWYERING (Michael A. Olivas ed., 2006) (discussing Cadena's graduation from UT Austin Law in 1940, role in litigating *Hernandez v. Texas*, 347 U.S. 475 (1954) (extending constitutional equal protection to Mexican Americans), and teaching at St. Mary's School of Law); Olivas, *supra* note 1, at 128 ("The first Mexican-American law professor was Carlos Cadena, who taught at St. Mary's Law School from 1952 to 1954 and from 1961 to 1965. He was also co-counsel in *Hernandez v. Texas*, and is thought to be the first Chicano to have argued before the U.S. Supreme Court."); Michael A. Olivas, *The "Trial of the Century" that Never Was: Staff Sgt. Macario Garcia, the Congressional Medal of Honor, and the Oasis Café*, 83 IND. L.J. 1391, 1399 (2008) ("In 1954, Cadena became the first Mexican-American law professor, joining the St. Mary's Law faculty.") [hereinafter Olivas, *Trial of the Century*]; Michael A. Olivas, *The Accidental Historian or How I Found My Groove in Legal History*, in A PROMISING PROBLEM: THE CURIOUS STATE OF CHICANA/O HISTORY IN THE TWENTY-FIRST CENTURY 3 (Carlos K. Blanton ed., forthcoming) (on file with author) (noting that Olivas became a law professor in 1982) [hereinafter Olivas, *Accidental Historian*]; Michael A. Olivas, Curriculum Vitae, <http://www.law.uh.edu/faculty/cv/MichaelOlivas2015.pdf> (last visited Oct. 16, 2015) (on file with author) [hereinafter Olivas, Curriculum Vitae]. See also Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicano Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143, 1151 (1999) ("The first [Latina law professors include] Rachel Moran and Berta Hernández, two prominent LatCrit scholars, [who] joined the academy in the 1980s.").

being regarded as the Dean of Latina and Latino (Latina/o) law professors in the United States.³ For those in the know, his audacious “Dirty Dozen List” advocacy in collaboration with Hispanic National Bar Association colleagues may be the most obvious reason for this appellation and the *respeto* (respect) that it signifies.⁴ Professor Olivas’s historic advocacy for United States law schools to hire, retain, and grant tenure to Latina/o law professors, however, is only one aspect of his lifetime of scholarship, teaching, and service to the United States’ legal profession, diverse Latina/o communities, and the nation as a whole.⁵

3. See Johnson & Martínez, *supra* note 2, at 1150–51 (“Against this background of the Chicano movement, we encounter the Chicana/o law professors of the 1970s and early 1980s Among these first Chicana/o law professors are scholar activists, including, but not limited to Leo Romero, Cruz Reynoso, and Richard Delgado. . . . Another person who fits within this long history of Mexican American scholar activists is Michael Olivas (roughly of this generation), considered to be the ‘Dean’ of Latina/o law professors, who began teaching law in 1982.”) (citations omitted); Ediberto Román & Christopher Carbot, *Freeriders and Diversity in the Legal Academy: A New Dirty Dozen List?*, 83 INDIANA L. REV. 1235, 1238 n.20 (2008) (“Due in part to his efforts associated with creating the Dirty Dozen List and his tireless efforts in assisting [Latina/os] with entering the academy, Professor Olivas is affectionately referred to as the Dean of all [Latina/o] law professors.”).

4. See Johnson & Martínez, *supra* note 2, at 1151 (“When Olivas began teaching there were only 22 Latina/o law professors, and, due in no small part to his efforts, there were 125 in the spring of 1998 “To pressure law schools to increase the number of Latina/o law professors, Olivas, with the backing of the Hispanic National Bar Association, established the so-called ‘Dirty Dozen’ list, i.e., a select list of law schools in areas with a significant Latina/o population but with no Latina/o faculty. The well-publicized list placed pressure on law faculties to hire Latinos/as; [and] some schools did. Olivas also conducted workshops for lawyers interested in law teaching at the annual Hispanic National Bar Association convention.”) (citations omitted); Román & Carbot, *supra* note 3, at 1238–39 (“This List, comprised of the top twelve U.S. law schools located in high [Latina/o] populated areas but lacking a single [Latina/o] professor on the faculty, served to increase awareness of the lack of diversity at some of the nation’s top legal institutions, as well as ‘shame’ these schools into remedying the dearth of diversity within their faculties.”) (citation omitted). See also Olivas, *supra* note 2, at 128–38 (discussing the situation of the Latina/o law professoriate as of the 1992–93 academic year, and presenting an array of policy prescriptions to increase the hiring of Latina/o law professors).

5. See generally Olivas, *Accidental Historian*, *supra* note 2 (discussing Olivas’s early vocational choices, the arc of his scholarly career, and how his scholarship on higher

In this Article, I pay homage to Professor Olivas, as an exemplar of Latina/o law professors, by engaging with several works of his scholarship, particularly *"Breaking the Law" on Principle: An Essay on Lawyers' Dilemmas, Unpopular Causes, and Legal Regimes*.⁶ I also explain how I understand myself to have benefited from Professor Olivas's historic advocacy for diverse Latina/o communities.⁷ As developed below, I understand my scholarly engagement with Olivas, and both of our careers, in the context of what I call *la gran lucha* (the great struggle), "the understanding that our pasts are not merely multicolored: rather, our diverse heritages wind through centuries of socio-legal struggle, which transcend the current nation state."⁸ I

education law and immigration law led him to legal history); Olivas, Curriculum Vitae, *supra* note 2.

6. Michael A. Olivas, *"Breaking the Law" on Principle: An Essay on Lawyers' Dilemmas, Unpopular Causes, and Legal Regimes*, 52 U. PITT. L. REV. 815 (1991), reprinted in THE LATINO/A CONDITION: A CRITICAL READER 320-31 (Richard Delgado & Jean Stefancic eds., 1998) [hereinafter LATINO/A CONDITION] and LATINOS AND THE LAW: CASES AND MATERIALS 813-20 (Richard Delgado, Juan F. Perea & Jean Stefancic eds., 2008) [hereinafter LATINOS AND THE LAW].

7. See, e.g., Alfredo P. García, Walking the Walk for the Latina Professoriate (discussing how Professor Olivas supported and mentored García, the first Cuban American to become dean of a law school in the United States) (unpublished manuscript) (on file with author). Dean García joined the St. Thomas University School of Law faculty in 1989. *Id.* at 1. Twenty-two years later, I joined the St. Thomas Law faculty after four years of lawyering at the Alameda County Homeless Action Center and teaching undergraduate Ethnic Studies courses at San Francisco State University and the University of California, Berkeley. See Marc-Tizoc González, *Critical Ethnic Legal Histories: Unearthing the Interracial Justice of Filipino American Agricultural Labor Organizing*, 3 U.C. IRVINE L. REV. 991, 1025-29 (2013) (discussing the author's experiences as an activist, attorney, and educator based in Oakland, California, by explicating design and implementation of the course, "Interracial Justice at Law: Researching the Histories of San Francisco Bay Area Legal Advocacy Organizations," developed as a U.C. Berkeley Chancellor's Public Scholar, 2010-11).

8. González, *supra* note 7, at 1012. Cf. Rachel Anderson, Marc-Tizoc González & Stephen Lee, *Toward a New Student Insurgency: A Critical Epistolary*, 87 CAL. L. REV. 1879, 1898 n.78 (2006) ("*La lucha* refers to the people's perpetual struggle for justice. *El pueblo* refers to the people communally working together; it also means 'the town,' connoting the polis."); see also Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women*, 53 U. MIAMI L. REV. 749, 755 n.47 (1999) ("The word 'Lucha' means 'the struggle' in Spanish.").

deploy the concept of *la gran lucha* to frame my interpretation of Olivas's career, and those of Latina/o law professors who evince principles similar to his, and to contextualize their (our) efforts within actual lineages and fictive genealogies of Latina/o lawyers across the twentieth century.⁹

To embark toward that conclusion, I first discuss Professor Olivas's thoughtful response to Professor Martha L. Minow's article, *Breaking the Law: Lawyers and Clients in Struggles for Social Change*.¹⁰ In reviewing the three case studies that Olivas developed in order to extend Minow's inquiry into three risks of legal representation, I also discuss the scholarly response to Olivas's essay, from 1993 when the first law review publication cited to it, through 2013 when the twenty-fourth did so.¹¹ Along the way, I discuss how the case studies implicate similar risks of representation regarding reemerging socio-legal situations, particularly the situation of women and children from El Salvador, Guatemala, and Honduras who seek asylum in the United States (the risk of nonrepresentation), and the detention of people from other Latin American countries, on the basis of their unauthorized immigration status, who migrate to the United States in order to create a better life for themselves and their families (the risk of terminated representation). Toward the end of Part I, I discuss the legal scholarship, by Olivas and others, on a famous Chicano lawyer, Oscar "Zeta" Acosta, who has been acclaimed for quashing the indictment of Chicano Movement activists in late 1960s Los Angeles.¹²

Olivas's scholarship on Acosta illuminated the risk of truncated representation and suggested one way to confront it: rather than accede to the criminalization of his clients, Acosta subpoenaed the in-court testimony of over one hundred judges regarding their nomination practices for the Los Angeles grand jury, and he

9. See *infra* Part II (discussing the legal history of Chicana/o and other Mexican American lawyers in California and Texas).

10. See Martha L. Minow, *Breaking the Law: Lawyers and Clients in Struggles for Social Change*, 52 U. PITT. L. REV. 723 (1991); Olivas, *supra* note 6.

11. See *infra* Appendix 1 (listing the twenty-four citing references to Olivas, *supra* note 6).

12. See *infra* Part I.C (discussing the risk of truncated representation).

ultimately proved that they violated constitutional equal protection.¹³

Building upon the legal scholarship on Acosta, I conclude the Article by explaining why I interpret the work of Professor Olivas, particularly his scholarship, but also his teaching and service, under the concept of *la gran lucha*. I explicate by discussing several twentieth century Mexican American lawyers in California who preceded Acosta, and I argue that they contextualize the work of Olivas, and other Latina/o law professors, within actual lineages and fictive genealogies of people who use the law to struggle against injustice. Learning how lawyers of diverse racialized ethnic identities confronted the risks of representation in the past can benefit lawyers, and other legal workers, who struggle against injustice today.

I. Breaking the Law on Principle: Olivas's Risk of Representation Case Studies

In this Part, I review the three case studies that Professor Olivas developed in order to extend Professor (now Harvard Law dean) Martha Minow's inquiry into three risks of representation for lawyers whose clients "entertain breaking the law as one of their strategies for achieving social change."¹⁴ While reviewing each case study, I gloss how other scholars have responded to Olivas's essay and discuss how the case studies implicate similar and reemerging socio-legal situations (and their concomitant risks of representation). I end the Part by briefly discussing a few apparently new socio-legal situations that implicate the three risks of representation, which militate for further research into how lawyers might confront the risks of representation in order to ethically represent people who seek social justice under, and beyond, the color of the law.¹⁵

In 1991, almost a decade into his career as a law professor,

13. See *infra* notes 151–53, 277–85, 292–97 and accompanying text.

14. Minow, *supra* note 10, at 723–24.

15. On the "color of law" notion, and the state action doctrine, see generally Richard H.W. Maloy, "Under Color of" – What Does It Mean?, 56 MERCER L. REV. 565 (2005), (cited approvingly in *United States v. Temple*, 447 F.3d 130, 141 n.1 (2d Cir. 2006)).

Professor Olivas published an essay in response to Professor Minow's inquiry into how lawyers and law students could learn from clients and communities who struggled to achieve social change outside of institutions and conduct deemed lawful in a particular historical moment.¹⁶ In Minow's provocative phrasing, "[W]hat can and what should lawyers do for clients who entertain breaking the law as one of their strategies for achieving social change?"¹⁷ Olivas responded to Minow by focusing on the three risks of representation that she characterized as:

inherent in the lawyer-client relationship that occur when the client breaks the law in order to pursue social, political, or legal change: a risk of nonrepresentation, where no accomplished lawyer will take the case; a risk of terminated representation, when ethical requirements may jeopardize an unpopular client's defense; and a risk of truncated representation, where the lawyer's choice of tactics may undermine the very premise of the client's grievance.¹⁸

As Olivas explained his essay's purpose:

I seek to extend [Minow's] inquiry by posing several cases that elaborate upon her thesis, which I take to be that most legal education neither equips students to think strategically or ethically about enduring inequities in society, nor provides problem-solving experiences so that students can undertake social reform in life after law school.¹⁹

He then presented three case studies to illustrate the risks of representation that Minow had identified. Although each case study implicated all three risks of representation, in my view each case study highlighted a particular risk: (1) the risk of nonrepresentation for unaccompanied children from Central American countries who sought asylum in the United States in the late 1980s through federal

16. See Minow, *supra* note 10; Olivas, *supra* note 6.

17. Minow, *supra* note 10, at 723–24.

18. Olivas, *supra* note 6, at 815.

19. *Id.* at 819.

courts located in Texas;²⁰ (2) the risk of terminated representation when lawyers organized boycotts of Israeli military courts in 1989 to protest their clients' conditions of detention and lack of due process following the first *Intifada*;²¹ and (3) the risk of truncated representation through the startling litigation strategy attributed to Chicano lawyer Oscar "Zeta" Acosta.²² Acosta defended Chicano Movement activists in the late 1960s, including those who were indicted for felony conspiracy to commit various misdemeanor crimes allegedly committed while organizing the Chicano "blowouts" of March 1968, massive student walk-out strikes against the racist conditions of their East Los Angeles high schools.²³ To quash the indictments, Acosta subpoenaed and interrogated more than one hundred judges in court, seeking to prove that their grand jury selection practices violated constitutional equal protection.²⁴

20. *Id.* at 819–35. See also Michael A. Olivas, *Unaccompanied Refugee Children: Detention, Due Process, and Disgrace*, 2 STAN. L. & POL'Y REV. 159 (1990) (discussing the detention of thousands of unaccompanied children in refugee camps without access to basic necessities) [hereinafter Olivas, *Unaccompanied Refugee Children*].

21. Olivas, *supra* note 6, at 820, 835–46. Discussing the 1987 uprising against the conditions of the "Occupied Territories" (a.k.a., the *Intifada*) in detail is beyond the scope of this Article, but for a view contemporaneous to Olivas's essay, see Richard A. Falk & Burns H. Weston, *The Relevance of International Law to Palestinian Rights in the West Bank and Gaza: In Legal Defense of the Intifada*, 32 HARV. INT'L L.J. 129 (1991).

22. Olivas, *supra* note 6, at 820, 846–54. On the life and times of Oscar Z. Acosta, see OSCAR ACOSTA, *THE AUTOBIOGRAPHY OF A BROWN BUFFALO* (1972) [hereinafter ACOSTA, *BUFFALO*]; OSCAR ACOSTA, *THE REVOLT OF THE COCKROACH PEOPLE* (1973) [hereinafter ACOSTA, *REVOLT*]; OSCAR "ZETA" ACOSTA: *THE UNCOLLECTED WORKS* (Ilan Stavans ed., 1996) [hereinafter UNCOLLECTED WORKS]. Acosta was born on April 8, 1935, in El Paso, Texas. ILAN STAVANS, *BANDIDO: OSCAR "ZETA" ACOSTA & THE CHICANO EXPERIENCE* 125 (1995). His date of death is unknown, but he disappeared off the coast of México in May 1974 and was declared legally dead on December 18, 1986. Olivas, *supra* note 6, at 854 n.154 (citing *In re Estate of Oscar Zeta Acosta*, Order No. P710333, Los Angeles Superior Court (Dec. 18, 1986)).

23. Olivas, *supra* note 6, at 820, 846–54. On the late 1960s Chicano Movement in Los Angeles, see, e.g., MARIO T. GARCÍA & SAL CASTRO, *BLOWOUT!: SAL CASTRO AND THE CHICANO FIGHT FOR EDUCATIONAL JUSTICE* (2011); IAN F. HANEY LÓPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE* (2003); CARLOS MUÑOZ, JR., *YOUTH, IDENTITY, POWER: THE CHICANO MOVEMENT* (1989). See also *Walkout* (Edward James Olmos dir., 2006).

24. Olivas, *supra* note 6, at 820, 846–54.

A. The Risk of Nonrepresentation

Professor Olivas discusses the risk of nonrepresentation by focusing on “the case of unaccompanied refugee children, [whom] the government has openly and flagrantly precluded from receiving counsel.”²⁵ He contextualizes the detention of “unaccompanied children who have felt the violence in their Central American countries” within the then-recent “Congressional action to apologize for the internment of [around 120,000] Japanese Americans during World War II and to make long overdue restitution for their appropriated property.”²⁶ Possibly to forestall some readers’ protests that the Japanese “war relocation centers” should not be compared to refugee camps for Central American children, Olivas then details the grim conditions of confinement within the then-new camps, which the then-Immigration and Naturalization Service (“INS”) established in early 1989.²⁷

For example, Olivas discusses the “expansion of detention facilities in rural areas such as Florence, Arizona, and El Centro,

25. *Id.* at 819.

26. *Id.* at 820; *see also* COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *PERSONAL JUSTICE DENIED* 2–3 (1983), <http://www.archives.gov/research/japanese-americans/justice-denied/> (“This policy of exclusion, removal, and detention was executed against 120,000 people without individual review[.]”) [hereinafter *PERSONAL JUSTICE DENIED*]; MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 175 (2006) (“Presuming all Japanese in America to be racially inclined to disloyalty, the United States removed 120,000 Japanese Americans—two-thirds of them citizens—from their homes on the Pacific Coast and interned them in ten concentration camps in the interior.”) (citation omitted); Denshō, <http://www.densho.org> (last visited July 27, 2015) (preserving oral histories of Japanese Americans detained by the United States during World War II); Adam Liptak, *A Discredited Supreme Court Ruling That Still, Technically, Stands*, N.Y. TIMES (Jan. 27, 2014), http://www.nytimes.com/2014/01/28/us/time-for-supreme-court-to-overrule-korematsu-verdict.html?_r=0 (noting that the United States removed 110,000 Americans of Japanese ancestry from their homes and confined them in detention camps during World War II).

27. *See* Olivas, *supra* note 6, at 821. *See also* NGAI, *supra* note 26, at 169, 175–201 (discussing the “mass incarceration [of Japanese Americans] in U.S. concentration camps from 1942 to 1945”).

California, as well as in six sites in South Texas: Los Fresnos, Raymondsville, Port Isabel, Hondo, Brownsville, and San Benito.”²⁸ Emblematic of the “ramshackle” condition of these “detention centers,” Olivas highlights, “[O]ne site in Texas has been sardonically dubbed ‘El Corralon’ (*The Corral*), while another is a former Department of Agriculture pesticide storage facility.”²⁹ Citing to testimony before Congressional hearings, contemporary journalism, authoritative reports by government agencies and lawyers’ organizations, and reported judicial opinions, Olivas demonstrates that the detention centers failed to provide essential services to the children whom they confined, including health care, education, counseling, and access to legal services.³⁰ He concludes, “Such coercive conditions have wreaked serious damage upon the children, who often have no family members to protect their interests and who are unaware of their rights under United States law.”³¹

From the terrible conditions of the children’s confinement, Olivas then excoriates the INS practices that have deprived these children of their rights under constitutional due process and controlling statutes.³² He explains:

The practice of detaining alien minors has advanced two ulterior motives. First, the harsh practice is used to discourage other refugees from migrating to the United States—to show them that the United States “means business.” Secondly, the practice of requiring parents or family members to appear in person and claim the children has been fashioned to “bait” undocumented families into revealing themselves to authorities.³³

Drawing upon then-recent federal district court opinions, Olivas details how the INS had “acted to deprive unaccompanied alien

28. Olivas, *supra* note 6, at 822.

29. *Id.*

30. *See id.* at 821–26.

31. Olivas, *supra* note 6, at 822.

32. *Id.* at 823–26.

33. *Id.* at 823.

minors of their rights to full hearings and other due process rights.”³⁴ For example, “the judge in *Orantes-Hernandez* found a ‘persistent pattern and practice of misconduct,’ use of ‘intimidation, threats, and misrepresentation,’ and evidence of ‘a widespread and pervasive practice akin to a policy’ concerning pressure on Salvadorans to concede their rights.”³⁵ Olivas also decried “the remote locations of the facilities, INS policies on transfer and availability of legal resources, and poor response by organized bars,” concluding that, “legal assistance to unaccompanied children is virtually non-existent.”³⁶ He highlighted that, “even though Laredo, Texas is hundreds of miles away from San Antonio, over eighty percent of the San Antonio region immigration caseload is in Laredo.”³⁷ Most egregious, in his estimation, however was “the INS practice of transferring aliens as a means of depriving them of counsel.”³⁸ Indeed, “in several instances, transfers have even been made after counsel was retained or as a blatant attempt to deny [the right to] counsel.”³⁹

Reading Olivas’s essay some twenty-four years after it was published, I am reminded of the phrase, *plus ça change, plus c’est la même chose* (the more things change, the more they stay the same).⁴⁰

34. Olivas, *supra* note 6, at 824–25 (discussing *Flores v. Meese*, 681 F. Supp. 665 (C.D. Cal. 1988), *rev’d* by 913 F.2d 1315 (9th Cir. 1990); *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488 (C.D. Cal. 1988); *Perez-Funez v. INS*, 611 F. Supp. 990 (C.D. Cal. 1984), *modified* by 619 F. Supp. 656 (C.D. Cal. 1985)). See also Olivas, *supra* note 6, at 825–26 (discussing *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434 (9th Cir. 1986); *Comm. of Cent. Am. Refugees v. INS*, 682 F. Supp. 1055 (N.D. Cal. 1988); *Nuñez v. Boldin*, 537 F. Supp. 578 (S.D. Tex. 1982), *appeal dismissed* 692 F.2d 755 (5th Cir. 1982)). For further discussion of *Flores*, see *infra* note 60.

35. Olivas, *supra* note 6, at 824 (citing *Orantes-Hernandez*, 685 F. Supp. 1488, 1504–05 (C.D. Cal. 1988), *aff’d sub nom. Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990)).

36. Olivas, *supra* note 6, at 824.

37. *Id.* at 824.

38. *Id.* at 825.

39. *Id.* at 825–26 (citation omitted).

40. The phrase is attributed to the French critic, journalist, and novelist, Jean-Baptiste Alphonse Karr (Nov. 24, 1808, to Sept. 29, 1890), who coined it as an epigram in the January 1849 issue of his monthly journal *Les Guêpes* (The Wasps). See Alphonse Karr, WIKIQUOTE, at https://en.wikiquote.org/wiki/Alphonse_Karr (last modified Mar. 10, 2015); *plus ça change, plus c’est la même chose*, WIKTIONARY, <https://en.wiktio>

As a socially active law student, lawyer, and professor⁴¹ over the past dozen-or-so-years, I have read and heard myriad accounts of the United States Immigration and Customs Enforcement agency (“ICE”) of the Department of Homeland Security detaining people throughout the United States, on (un/reasonable?) suspicion of them lacking authorized immigration status.⁴² While I did not practice immigration law in this period, my Chicana/o identity,⁴³ education in

nary.org/wiki/plus_ça_change,_plus_c’est_la_même_chose (last modified Feb. 9, 2015); accord Charles Sumner Stone, Jr., *Thucydides’ Law of History, or from Kerner, 1968 to Hacker, 1992*, 71 N.C. L. REV. 1711, 1733 n.82 (1993); Kathryn A. Stephens, *Introduction*, 3 ST. MARY’S J. LEGAL MAL. & ETHICS 281, 282 n.9 (2013).

41. See Anderson et al., *supra* note 8, at 1892–1905 (theorizing insurgent student activism distilled from the author’s experience in Berkeley Law student organizations from 2002 to 2005); see also González, *supra* note 7, at 1026–29 (discussing the author’s creation of the course, “Interracial Justice at Law: Researching the Histories of San Francisco Bay Area Legal Advocacy Organizations” within the context of lawyering at the Oakland, California office of the Alameda County Homeless Action Center, teaching Ethnic Studies courses at San Francisco State University and U.C. Berkeley, and serving as a director or officer of, *inter alia*, the Berkeley Law Foundation, Centro Legal de la Raza, East Bay La Raza Lawyers Association, and National Lawyers Guild – San Francisco Bay Area Chapter).

42. See, e.g., RAQUEL ALDANA & STEVEN BENDER, SALT STATEMENT ON POST 9/11 IMMIGRATION MEASURES (2007) (on file with author) (explaining the evolution of Congressional plenary power over immigration in order to increase awareness of how law has functioned to exclude noncitizens from fundamental rights); U.S. DEPT. HOMELAND SEC., BUREAU OF IMMIGRATION & CUSTOMS ENFORCEMENT, ENDGAME OFFICE OF DETENTION AND REMOVAL STRATEGIC PLAN, 2003-2012 ii (Aug. 15, 2003) (on file with author) (planning to detain and deport “all removable aliens” in order “to maintain the integrity of the immigration process and protect our homeland”); ERIK CAMAYD-FREIXAS, STATEMENT OF DR. ERIK CAMAYD-FREIXAS FEDERALLY CERTIFIED INTERPRETER AT THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA REGARDING A HEARING ON “THE ARREST, PROSECUTION, AND CONVICTION OF 297 UNDOCUMENTED WORKERS IN POSTVILLE, IOWA, FROM MAY 12 TO 22, 2008” (June 13, 2008), http://judiciary.house.gov/_files/hearings/pdf/Camayd-Freixas080724.pdf (commenting on the arrest, prosecution, and conviction of 297 undocumented workers who were detained following a raid of Agriprocessors, Inc., the nation’s largest kosher slaughterhouse and meat packing plant, located in Postville, Iowa, and critiquing the judicial process as marred by myriad irregularities, which undermined the defendants’ due process rights and defense against federal felony charges of identity theft).

43. See Anderson et al., *supra* note 8, at 1880 n.4 (discussing the author’s Chicana/o identity).

comparative ethnic studies and critical race theory,⁴⁴ and affiliation with Latina and Latino Critical Legal (LatCrit) theory, praxis, and community⁴⁵ have informed me about the colonialist and racist histories of United States immigration policies and practices,⁴⁶ and motivated me to learn about their enforcement in the twenty-first century. Olivas's essay deepens and concretizes the insight that the people who have directed ICE over the past dozen years barely needed to dust off the playbooks of yesterday's INS—both as to immigrants in general and, particularly, as to children from Central American countries seeking refuge in the United States.

For example, when I first heard about ICE's practice of quickly

44. See *id.* at 1892–1904 (discussing the author's education in critical race theory, and experiences with LatCrit theory, praxis, and community through “insurgent student activism” at Berkeley Law from 2002–05); González, *supra* note 8, at 1026, 1033–34 (discussing the author's education in comparative ethnic studies at San Francisco State University).

45. See Anderson et al., *supra* note 8, at 1897 n.76 (citing several exemplars of critical race theory); González, *supra* note 7, at 1006–07 nn.35–39 (citing exemplars of various genres of critical outsider jurisprudence, including Asian American legal scholarship, critical race feminism, critical race theory, and LatCrit theory).

46. See, e.g., NGAI, *supra* note 26, at 96–224 (discussing pre-1965 immigration law and policy regarding Filipino, Mexican, Japanese, and Chinese communities); RONALD L. MIZE & ALICIA C.S. SWORDS, CONSUMING MEXICAN LABOR: FROM THE BRACERO PROGRAM TO NAFTA xiii (2011) (arguing that postwar immigration patterns of typical Mexican immigrant workers must be understood in the context of how North American consumption practices have shaped particular labor demands for low wages and marginalized conditions). See also Anderson et al., *supra* note 8, at 1902 (contextualizing the twentieth-century *Bracero* programs and 1954's Operation Wetback within the aftermath of the 1846–48 United States invasion of México); Lauren Gilbert, *Fields of Hope, Fields of Despair: Legisprudential and Historic Perspectives on the AgJobs Bill of 2003*, 42 HARV. J. ON LEGIS. 417, 425–33 (2000) (providing a brief history of U.S. guest worker programs); González, *supra* note 7, at 993 n.2, 1017 n.70 and accompanying text (discussing the *Bracero* programs, which facilitated the entry of Mexican nationals to labor in the United States, predominantly in agriculture, from 1942–64, and discussing the conquest, occupation, and colonization of *las islas Filipinas* (the Philippine Islands) by the United States in the late nineteenth and early twentieth-century era of Asian exclusion, which subjected the archipelago's inhabitants to the status of being American nationals); Marc-Tizoc González, Who were the Braceros? What was Operation Wetback? – How Mid-Twentieth-Century Immigration and Labor Law and Policy Shape Today's Child Refugee Crisis 7 (unpublished manuscript) (on file with author).

sending an “immigrant detainee” away to a distant “detention facility” in a rural part of the state, or out of the state entirely,⁴⁷ it seemed not only outrageous but also lawless, as violating fundamental constitutional rights of due process and the assistance of counsel. Similarly, to me the ubiquitous ICE raids that began under the rule of President George W. Bush seemed redolent of mid-twentieth century travesties like 1954’s “Operation Wetback,” which deported over a million people who were deemed to be Mexican, including United States citizens of Mexican heritage, in a single year.⁴⁸ While I hope that few, if any, lawyers would deny that twentieth century history provides critical insights into the policies and practices that constitute or exacerbate injustice today, I have nevertheless spoken with many law students and lawyers who advance social justice under the color of law yet lack a deep and nuanced understanding of the socio-legal histories that contextualize

47. See, e.g., HUM. RTS. WATCH, LOCKED UP FAR AWAY: THE TRANSFER OF IMMIGRANTS TO REMOTE DETENTION CENTERS IN THE UNITED STATES (2009), INTER-AM. COMMISSION ON HUM. RTS., REPORT ON IMMIGRATION IN THE UNITED STATES: DETENTION AND DUE PROCESS, ORG. OF AM. STATES 137–40 (Dec. 30, 2010) (describing “pervasive use of transfers between detention facilities”).

48. See, e.g., HANEY LÓPEZ, *supra* note 23, at 83 (noting that 3.8 million people were deported to Mexico from the start of Operation Wetback, and over the next five years, with only 63,515 receiving formal deportation hearings, and the deportees included many U.S. citizens); MIZE & SWORDS, *supra* note 46, at 1–2, 25–40 (discussing Operation Wetback in detail); NGAI, *supra* note 23, at 155–57 (contrasting Operation Wetback with the Mexican workers whom the United States admitted during the same period under the Bracero Program); González, *supra* note 46, at 7 (presenting a chronology of Operation Wetback); Michael A. Olivas, *The Chronicles, My Grandfather’s Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425, 437–39 (1990) (“In 1954, over one million braceros were deported under the terms of ‘Operation Wetback,’ a ‘Special Mobile Force’ of the Border Patrol The Bracero Program, dehydration and Operation Wetback all presaged immigration programs of the 1980’s. During this time, the INS began ‘Operation Jobs,’ a massive early 1980’s workplace-raid program of deportations[.]”) (citations omitted). See generally JUAN RAMON GARCÍA, OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954 (1980). On the raids of homes by ICE agents searching for “immigration fugitives,” which the Bush Administration vastly expanded in 2006, see, e.g., Nina Bernstein, *Report Says Immigration Agents Broke Law and Agency Rules in Home Raids*, N.Y. TIMES (July 22, 2009), <http://www.nytimes.com/2009/07/22/nyregion/22raids.html>.

and shape present-day inequities.⁴⁹ Olivas's essay provides a powerful antidote to this historical amnesia.

Indeed, as to children from Central American countries seeking refuge in the United States, Olivas's essay seems positively prophetic. In 2014, the United Nations High Commissioner for Refugees and popular media in the United States noted a "surge" in unaccompanied children, primarily from the Central American countries of El Salvador, Guatemala, and Honduras, seeking asylum in nearby countries, including the United States.⁵⁰ The so-called surge in unaccompanied minors apprehended at the Southwest United States border with México, which received substantial media attention in the

49. See González, *supra* note 7, at 1020–21 ("Consequently, today's students are left to the vagaries of their own educational institutions, social networks, and serendipities—rather than being able to learn early and comprehensively about the existence of legal advocacy organizations that are dedicated to addressing the socio-legal needs of . . . differentially racialized communities."). Accord Marie A. Failing, *Necessary Legends: The National Equal Justice Library and the Importance of Poverty Lawyers' History*, 17 ST. LOUIS U. PUB. L. REV. 265, 284–87 (1998) (arguing persuasively for learning the history of the legal services movement); Olivas, *Accidental Historian*, *supra* note 2, at 21 ("I was astounded that I had been a law student, a legal scholar, and a Chicano, and I had never heard of the case [*Hernandez v. Texas*, 347 U.S. 475 (1954)] or of him [Southern District of Texas Judge James DeAnda] in this capacity [as one of the *Hernandez* lawyers].").

50. See, e.g., U.N. HIGH COMM'R FOR REFUGEES, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION 4–5 (May 2014) [hereafter CHILDREN ON THE RUN] (documenting the increased number of asylum seekers from El Salvador, Guatemala, and Honduras since 2009, with a noteworthy "surge," beginning in Oct. 2011, of unaccompanied and separated children from these countries, and from Mexico, seeking to enter the United States). See also *Children on the Run*, N.Y. TIMES (June 4, 2014), <http://nyti.ms/1kzi7lf>; Ian Gordon, *70,000 Kids Will Show Up Alone at Our Border This Year. What Happens to Them?*, MOTHER JONES (June/Aug. 2014), <http://www.motherjones.com/politics/2014/06/child-migrants-surge-unaccompanied-central-america> (reporting on "the child migrant surge," noting that the United States Border Patrol apprehended 38,833 unaccompanied minors in fiscal year 2013, and projecting as many as 74,000 such apprehensions in fiscal year 2014); Julianne Hing, *Three Myths of the Unaccompanied Minors Crisis, Debunked*, COLORLINES (July 1, 2014), <http://www.colorlines.com/articles/three-myths-unaccompanied-minors-crisis-debunked> (reporting that "the United States Conference of Catholic Bishops and the Women's Refugee Commission have noted the jump in unaccompanied minor border crossings since late 2011") (citation omitted).

summer of 2014, was first noted in fiscal year 2011 but the increase in people seeking asylum in the United States from El Salvador, Guatemala, and Honduras actually began in 2009.⁵¹

The numbers are striking, and the scale is massive. When Olivas wrote in 1991, “INS figures show[ed] over 880 alien children detained in Texas and 1,200 in California.”⁵² In fiscal year 2009 (October 1, 2008 to September 30, 2009), the United States Customs and Border Protection (“CBP”) agency reported encountering 1,221 “unaccompanied alien children” from El Salvador, 1,115 from Guatemala, 968 from Honduras, and 16,114 from México, at the Southwest border, totaling 19,418 children.⁵³ In fiscal year 2011, CBP reported encountering 1,394 “unaccompanied alien children” from El Salvador, 1,565 from Guatemala, 974 from Honduras, and 11,768 from México, totaling 15,701 children.⁵⁴ This figure was about eighty-one percent of the number reported for 2009 and apparently caused by the substantial decrease in CBP encounters with unaccompanied children from México. By fiscal year 2014, however, CBP reported 16,404 “unaccompanied alien children” from El Salvador, 17,057 from Guatemala, 18,244 from Honduras, and 15,634 from México, totaling 67,399 children, or about 347 percent of the 2009 number and 429 percent of the 2011 number.⁵⁵ Finally, in contrast to the reported numbers of “unaccompanied alien children” encountered in 2014, CBP reported that it had *apprehended* 68,541 “unaccompanied alien children” at the Southwest border, plus an *additional* 68,445 family unit apprehensions.⁵⁶

51. See CHILDREN ON THE RUN, *supra* note 50, at 4–5; see also SOUTHWEST BORDER UNACCOMPANIED ALIEN CHILDREN (FY 2014), U.S. CUSTOMS & BORDER PATROL, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014> (last visited Nov. 3, 2015).

52. Olivas, *Unaccompanied Refugee Children*, *supra* note 20, at 160.

53. U.S. CUSTOMS & BORDER PATROL, *supra* note 51.

54. *Id.*

55. *Id.* Accord Dan Restrepo & Ann Garcia, *The Surge of Unaccompanied Children from Central America*, CTR. FOR AM. PROGRESS 2 (July 24, 2014).

56. U.S. CUSTOMS & BORDER PATROL, *supra* note 51. Accord Cindy Carcamo, *Nearly 300 Women, Children, Deported from Immigration Detention Centers*, L.A. TIMES (Aug. 21, 2014), <http://www.latimes.com/nation/nationnow/la-na-nn-ff-new-mexico-immigration-deportation-20140821-story.html> (“In the last nine months, about 63,000

In the face of such numbers, the risk of nonrepresentation for unaccompanied refugee children is stark, and relatively few structural reforms have been implemented since Olivas highlighted the problem “of the children, many of whom have meritorious asylum claims, not being able to obtain counsel in time for counsel to be of significant assistance.”⁵⁷ While the conditions of confinement may have improved slightly, they remain inadequate.⁵⁸ ICE practices still seem designed to deprive these children of their rights, notwithstanding court orders to the contrary.⁵⁹ Children in

single parents with at least one child have been apprehended along the Southwest border, mainly in southern Texas. At the same time, about the same numbers of children traveling without a parent have been apprehended along the border.”).

57. Olivas, *supra* note 6, at 833.

58. See, e.g., Carcamo, *supra* note 56 (discussing a Department of Homeland Security Office of Inspector General report finding “inadequate amounts of food, inconsistent temperatures and unsanitary conditions—at various immigration holding facilities for children”). See also Anna Gorman, *Immigration Detention Centers Failed to Meet Standards, Report Says*, L.A. TIMES (July 29, 2009), <http://articles.latimes.com/2009/jul/29/nation/na-detention29>; Karen McVeigh, *Immigration Groups Allege Abuse of Migrant Minors by US Border Patrol*, GUARDIAN (UK) (June 11, 2014), <http://www.theguardian.com/world/2014/jun/11/us-unaccompanied-migrant-minors-abuse-border-patrol>; Julia Preston, *Official to Investigate Reports of Mistreatment of Minors Caught Crossing Border*, N.Y. TIMES (June 13, 2014), at A19; Nicole Flatow, *Feds Rush to Provide Basic Supplies for Surge of Migrant Kids Held in Makeshift ‘Warehouses’*, THINKPROGRESS (June 8, 2014), <http://thinkprogress.org/immigration/2014/06/08/3446282/migrant-children-surge>.

59. See, e.g., Wyl S. Hinton, *The Shame of America’s Family Detention Camps*, N.Y. TIMES (Feb. 4, 2015), <http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html> (“As the pro bono project in Artesia continued into fall, its attorneys continued to win in court. By mid-November, more than 400 of the detained women and children were free on bond. Then on Nov. 20, the administration suddenly announced plans to transfer the Artesia detainees to the ICE detention camp in Karnes, Tex., where they would fall under a new immigration court district with a new slate of judges.”). According to Google Maps, Artesia, New Mexico is 541.9 miles away from Karnes, Texas. See also *Flores v. Holder*, CV85-4544 DMG (C.D. Cal. Apr. 24, 2015), <http://media.mcclatchydc.com/smedia/2015/06/10/16/08/1exeYm.So.91.pdf> (“Tentative Ruling on Plaintiffs’ Motion to Enforce Settlement of Class Action and Defendants’ Motion to Amend Settlement Agreement”); Francisco Ordoñez, *Lawyer: I Released Judge’s Words to Protect my Clients in Family Detention*, SACRAMENTO BEE (June 11, 2015), <http://www.sacbee.com/news/nation-world/national/article23772475.html> (“U.S. District Court Judge Dolly Gee’s April 24

“detention centers” still lack the special protections provided to children in other contexts, including an *effective* right to counsel.⁶⁰ Moreover, despite being particularly vulnerable and in need of protection,⁶¹ Legal Services Corporation-funded programs (LSC programs) remain statutorily prohibited from serving these children,⁶² and biases against children from Central American countries have grown ever more pernicious.⁶³ Finally, while

tentative ruling, which has been kept secret for months, is a scathing rebuke of the Obama administration’s decision to significantly increase its use of family detention in response to a surge of mothers and children fleeing poverty and violence in Central America.”).

60. See, e.g., Sharon Finkel, Comment, *Voices of Justice: Promoting Fairness through Appointed Counsel for Immigrant Children*, 17 N.Y.L. SCH. J. HUM. RTS. 1105, 1006 (2001) (“Children in deportation hearings are entitled by statute to counsel, but this right is provided at no expense to the government.”) (citing Immigration and Nationality Act § 292, 8 U.S.C. § 1229 (Supp. 2000)). See also Ian Urbina & Catherine Rentz, *Immigrant Detainees and the Right to Counsel*, N.Y. TIMES (Mar. 30, 2013), <http://www.nytimes.com/2013/03/31/sunday-review/immigrant-detainees-and-the-right-to-counsel.html> (reporting on the legal and practical reasons why detained immigrants lack counsel).

61. See, e.g., Finkel, *supra* note 60, at 1127-32 (arguing that the law should protect children because of their intrinsic vulnerability); Olivas, *supra* note 6, at 826-33 (demonstrating U.S. law provides children with special protection in other contexts and arguing that children in immigration proceedings particularly need such protection); Olivas, *Unaccompanied Refugee Children*, *supra* note 20, at 161-62 (same).

62. See Olivas, *supra* note 6, at 831 (“[T]he Legal Services Corporation (LSC) program is statutorily prohibited from serving these aliens.”) (citation omitted); Kevin R. Johnson & Amagda Pérez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423, 1429 (1998) (“Congress worsened matters in the 1980s by restricting the ability of legal services organizations receiving national Legal Service Corporation funds to represent immigrants.”) (citations omitted); Clare L. Workman, *Kids Are People Too: Empowering Unaccompanied Minor Aliens Through Legislative Reform*, 3 WASH. U. GLOBAL STUD. L. REV. 223, 245 (2004) (“Only in rare cases would the government need to appoint an attorney, and it could easily accomplish this by removing restrictions on the Legal Services Corporation’s ability to serve aliens.”).

63. Accord Keith Aoki & John Shuford, *Welcome to Amerizona—Immigrants Out!: Assessing “Dystopian Dreams” and “Usable Futures” of Immigration Reform, and Considering whether “Immigration Regionalism is an Idea whose Time has Come*, 38 FORDHAM. URB. L.J. 1, 3 (2010) (“The dystopian dream of immigration reform, of which Amerizona is just one version, is often strongly anti-immigrant, exclusionary, nativist, and even racist); Johnson & Pérez, *supra* note 62, at 1428 (“the troubles facing immigrants in this country have worsened considerably over time. Indeed, the 1990s

pecuniary interests around the detention of immigrants and refugees may have existed in 1989-91, by 2015 the profitability of detaining immigrants and refugees had become so infamous as to obtain recognition in “mainstream” journalism.⁶⁴

Perhaps the only structural reform that has been implemented better today than when Olivas penned his essays on the subject some twenty-four years ago,⁶⁵ is that organized bar associations, particularly the American Immigration Lawyers Association (“AILA”),⁶⁶ non-LSC funded specialized legal advocacy organizations

saw the worst outbreak of nativism and restrictionist legislation since early in the twentieth century.”) (citations omitted). *See generally* JUSTIN AKERS CHACÓN & MIKE DAVIS, NO ONE IS ILLEGAL: FIGHTING RACISM AND STATE VIOLENCE ON THE U.S.-MEXICO BORDER (2006); IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES (Juan F. Perea ed., 1997).

64. *See, e.g.*, Nina Bernstein, *Companies Use Immigration Crackdown to Turn a Profit*, N.Y. TIMES (Sept. 28, 2011), <http://www.nytimes.com/2011/09/29/world/asia/getting-tough-on-immigrants-to-turn-a-profit.html> (“In the United States—with almost 400,000 annual detentions in 2010, up from 280,000 in 2005—private companies now control nearly half of all detention beds, compared with only 8 percent in state and federal prisons, according to government figures.”). By “mainstream,” I mean journalism that is popular in the sense of widespread readership but which tends either to identify with the power elite, or to privilege their interests. *See* Anderson et al., *supra* note 8, at 1895 n.68, 1879 n.86 (explaining the author’s usage of the word “mainstream” and the phrase “of the people,” in light of Chicana/o Studies texts and Latin American liberation philosophy conferences). On the “power elite,” *see* C. WRIGHT MILLS, THE POWER ELITE 3–4 (new ed. 2000) (“The power elite is composed of men [sic] whose positions enable them to transcend the ordinary environments of ordinary men and women; they are in positions to make decisions having major consequences For they are in command of the major hierarchies and organizations of modern society.”). *Cf. The Richest People in America*, FORBES, at <http://www.forbes.com/forbes-400/> (last visited July 12, 2015).

65. Olivas, *supra* note 6; Olivas, *Unaccompanied Refugee Children*, *supra* note 20.

66. *See* Hinton, *supra* note 59 (reporting on the efforts of Denver lawyer Christina Brown, and others, to relocate to Artesia, New Mexico in order to organize a *pro bono* project of roughly 200 attorneys, law students, and paralegals to represent detained children and women). *See also* CARA Family Detention Pro Bono Project, AILA Doc No. 14100656, AM. IMMIGRATION LAWYERS ASS’N, (June 5, 2015), <http://www.aila.org/practice/pro-bono/find-your-opportunity/cara-family-detention-pro-bono-project> (“Immigrants’ rights and immigrant legal services groups are announcing the establishment of a family detention project to provide legal services to children and their mothers detained in Karnes City and Dilley, Texas, and to advocate for the end

(e.g., Catholic Legal Immigration Network, the American Immigration Council, and the Refugee and Immigrant Center for Education and Legal Services),⁶⁷ and law school-based legal clinics, have organized spirited *pro bono publico* efforts to represent some of the Central American women and children who are seeking asylum in the United States.⁶⁸ Also, although they do not constitute a structural reform, detained women seeking asylum in the United States have organized profound protests against their conditions of confinement, including hunger strikes, which have increasingly received mainstream media coverage.⁶⁹ In turn, for one who knows about the history of Central American peoples who sought asylum in the United States in the 1980s, today's mass hunger strikes by

of family detention"). See generally *Featured Issue: Central American Humanitarian Crisis*, AILA Doc No. 14070148, AM. IMMIGRATION LAWYERS ASS'N, (Mar. 30, 2015), <http://www.aila.org/advo-media/issues/central-american-humanitarian-crisis> (linking to numerous resources on attempts to undermine protections for asylees and unaccompanied children, due process for children in removal proceedings, government resources, AILA member action items, etc.).

67. See *CARA Family Detention Pro Bono Project*, *supra* note 66.

68. See, e.g., Johnson & Pérez, *supra* note 62, at 1426-27 (evaluating the benefits of clinical legal education for subordinated communities through a case study of the Immigration Law Clinic at the University of California at Davis School of Law). See also Antoinette Sedillo Lopez, *Learning Through Service In a Clinical Setting: The Effect Of Specialization On Social Justice And Skills Training*, 7 CLINICAL L. REV. 307, 324 (2001) (arguing for teachers of immigration law clinics to help students "see the full picture of the social and legal needs" of their clients); Liz Robbins, *Program Providing Legal Help to Immigrants Will Expand Beyond New York City*, N.Y. TIMES (May 13, 2015), http://www.nytimes.com/2015/05/14/nyregion/program-providing-legal-help-to-immigrants-will-expand-beyond-new-york-city.html?_r=0 (reporting on the second cohort of New York's new Immigrant Justice Corps, <http://justicecorps.org>). See generally IMMIGRANT JUSTICE CORPS, <http://justicecorps.org> (last visited July 28, 2015).

69. See, e.g., Wyl S. Hinton, *A Federal Judge and a Hunger Strike Take on the Government's Immigrant Detention Facilities*, N.Y. TIMES (Apr. 10, 2015), <http://www.nytimes.com/2015/04/06/magazine/a-federal-judge-and-a-hunger-strike-take-on-the-governments-immigrant-detention-facilities.html> ("Last week, after pro-longed confinement, 78 young women at a facility in Karnes County, Tex., took the drastic final measure of prisoners everywhere: They announced a 'hunger strike' and declared their refusal to work or 'use any service in this place' until conditions improve.").

detained women evoke the original Sanctuary Movement,⁷⁰ and must be understood within the context of the resurgence of “sanctuary cities” over the past decade.⁷¹

A comprehensive review of the current situation of Central American people seeking asylum in the United States is beyond the scope of this Article. One takeaway point, however, is that Olivas’s description of the structural conditions faced by children from Central America who sought asylum in the United States in the late 1980s feels almost prescient. By commenting critically on several timely controversies, Olivas informed a strain of subsequent legal scholarship on the subject.⁷² Indeed, nineteen of the twenty-four law review articles that cite to his essay did so for propositions related to the conditions of refugee children and their unmet needs for legal representation.⁷³ In contrast, relatively few scholars engaged with

70. See, e.g., Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 909–12 (2008) (discussing the public interest response to the refugee crisis of the 1980s and how the Sanctuary Movement, “in which churches were turned into sanctuaries for refugees denied legal entrance[,]” established new organizations to advocate for the rights of people seeking asylum in the United States). For early legal scholarship on the Sanctuary Movement, see, e.g., Michele Altemus, *The Sanctuary Movement*, 9 WHITTIER L. REV. 683 (1988); Toney Anaya, *Sanctuary: Because There Are Still Many Who Wait for Death*, 15 HOFSTRA L. REV. 101 (1986); Douglas L. Colbert, *The Motion in Limine: Trial Without Jury A Government’s Weapon against the Sanctuary Movement*, 15 HOFSTRA L. REV. 5 (1986); Douglas L. Colbert, *The Motion in Limine in Politically Sensitive Cases: Silencing the Defendant at Trial*, 39 STAN. L. REV. 1271 (1987); Paul Wickham Schmidt, *Refuge in the United States: The Sanctuary Movement Should Use the Legal System*, 15 HOFSTRA L. REV. 79 (1986); Kathleen L. Villarruel, Note, *The Underground Railroad and the Sanctuary Movement: A Comparison of History, Litigation, and Values*, 60 S. CAL. L. REV. 1429 (1987).

71. See, e.g., Huyen Pham, *The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power*, 74 U. CIN. L. REV. 1373 (2006); Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567 (2008); Rose Cuison Villazor, *What Is A “Sanctuary”?*, 61 SMU L. REV. 133 (2008); Rose Cuison Villazor, *“Sanctuary Cities” and Local Citizenship*, 37 FORDHAM. URB. L.J. 573 (2010); Kara L. Wild, *The New Sanctuary Movement: When Moral Mission Means Breaking the Law, and the Consequences for Churches and Illegal Immigrants*, 50 SANTA CLARA L. REV. 981 (2010).

72. See *infra* Appendix 1 (listing the twenty-four citing references to Olivas, *supra* note 6).

73. In chronological order, see Elizabeth Kay Harris, Comment, *Economic*

other aspects of his essay, including his case studies on the risks of terminated and truncated representation.⁷⁴

B. The Risk of Terminated Representation

While some people may believe that the conflict between the state of Israel and the people of Palestine is endemic or inevitable, perhaps

Refugees: Unprotected in the United States by Virtue of an Inaccurate Label, 9 AM. U. J. INT'L L. & POL'Y 269 (1993); Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, BYU L. REV. 1139 (1993); Jonathan O. Hafen, *Children's Rights and Legal Representation—The Proper Roles of Children, Parents, and Attorneys*, 7 NOTRE DAME J.L. ETHICS & PUB. POL'Y 423 (1993); Harold Hingju Koh, *America's Offshore Refugee Camps*, 29 U. RICH. L. REV. 139 (1994); Margaret H. Taylor, *Detained Aliens Challenging Conditions Of Confinement and The Porous Border of The Plenary Power Doctrine*, 22 HASTINGS CONST. L.Q. 1087 (1995); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42 (1995); Gail Quick Goeke, *Substantive and Procedural Due Process for Unaccompanied Alien Juveniles*, 60 MO. L. REV. 221 (1995); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997); Johnson & Pérez, *supra* note 62 (1998); Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525; Michael A. Olivas, *Immigration Law Teaching and Scholarship in the Ivory Tower: A Response to Race Matters*, 2000 U. ILL. L. REV. 613; Finkel, *supra* note 60; Lopez, *supra* note 68; Michelle Rae Pinzon, *Was the Supreme Court Right? A Closer Look at the True Nature of Removal Proceedings in the 21st Century*, 16 N.Y. INT'L L. REV. 29 (2003); Workman, *supra* note 62; Lisa A. Cahan, *Constitutional Protections of Aliens: A Call for Action to Provide Adequate Health Care for Immigration Detainees*, 3 J. HEALTH & BIOMEDICAL L. 343 (2007); Kevin R. Johnson, *Ten Guiding Principles for Truly Comprehensive Immigration Reform: A Blueprint*, 55 WAYNE L. REV. 1599 (2009); Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005 (2010) [hereinafter "Johnson, *Racial Profiling in America*"].

74. See, e.g., Aoki & Shuford, *supra* note 63, at 21 n.67 (citing Olivas, *supra* note 6, for the proposition that "most legal education neither equips students to think strategically or ethically about enduring inequities in society, nor provides problem-solving experiences so that students can undertake social reform in life after law school"); Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461, 503 (1993) (describing briefly all three of Olivas's case studies); Johnson & Martínez, *supra* note 2, at 1151 nn.54, 57 (discussing Olivas's case study of Oscar Z. Acosta).

especially those who think of themselves as not directly implicated by it, Professor Olivas's essay reminds its readers that this conflict is historical, not natural.⁷⁵ Hence, people (including lawyers)—not natural forces—act within and without the rule of law in order, *inter alia*, to manage, mitigate the harms of, profit from, promulgate, survive, and/or seek an end to, the conflict. Under such a view, contesting the legality of the myriad conflicting claims between the state of Israel and the people of Palestine appears fundamental to the conflict's origin, historical evolution, and future.

Olivas begins his case study of the risk of terminated representation by acknowledging "the historical complexity and instability of the Middle East" and then quickly draws his readers' attention to a fact that has likely been overshadowed by other aspects of the conflict:⁷⁶ "At several times since 1989, Arab and Israeli lawyers who defend Palestinians in Israeli military courts have organized boycotts and withheld their legal services in order to draw attention to the unsatisfactory conditions of detainment."⁷⁷ Responding to Minow, whose consideration of the risk of terminated representation focused on lawyers who might avoid representing law-breaking clients or believe themselves ethically required to terminate representation,⁷⁸ Olivas deploys this remarkable case study of a work

75. Olivas, *supra* note 6, at 836–42 (describing lawyers' responses to the *Intifada* based on discussion with Professor Jordan Paust, one of three fact finders sent to the Occupied Territories by the International Commission of Jurists in 1989, as well as published reports by the United States Department of State, lawyers' organizations, international nongovernmental organizations, and contemporary journalism). N.B. I follow Olivas in noting, "as in many issues how one views this conflict determines how one labels items, actions, and places Therefore, I stipulate that many of the place names have alternative designations, and my choices conformed with the sources of citations, not with any ideological or political predisposition." *Id.* at 836 n.69.

76. *See id.* at 838–39 (noting that the U.S. State Department's *Country Reports on Human Rights Practices* for 1989 made no mention of "the lawyers' boycott or the conditions that prompted the work stoppage.").

77. *Id.* at 836.

78. *See* Minow, *supra* note 10, at 743 ("If the client consults the lawyer before breaking a criminal law, some additional problems arise. The lawyer might feel it appropriate to breach the client's confidence and thereby terminate effective

stoppage by Arab and Israeli lawyers to address “when persons who break the law for political reasons may not find representation.”⁷⁹ As he refines the question: “[W]hat are a lawyer’s obligations when faced with mass prosecutions and inadequate resources, under circumstances in which the political reasons for the conflict are seemingly intractable?”⁸⁰

While not unprecedented, the idea of lawyers organizing to strike against a venue seems extraordinary,⁸¹ and the prosecutions following the *Intifada* were of a massive scale. As Olivas explains, “The *Intifada* began in 1987, and by July 1989, more than 30,000 Palestinians had been arrested and detained by the Israeli Defense Forces (“IDF”); by March 1991, the number had grown to more than 70,000.”⁸² To provide legal process for these detentions, the state of Israel established new “temporary courts in both the West Bank and Gaza, in Nablus, Ramallah, Jenin, Hebron, Kalkilya, Tulkarem, Gaza City, and Khan Yunis.”⁸³ The mass detentions and prosecutions quickly raised a number of serious concerns regarding international law standards and due process, including, *inter alia*, warrantless arrests, no effective right to counsel, no right to *habeas corpus*, no procedures to notify detainees’ families or lawyers of their whereabouts, indefinite detention with no bail hearings before a judge, no written verdicts or sentencing guidelines, and limited rights of appeal.⁸⁴

For example, Olivas discusses the IDF military orders and emergency defense regulations, which provided for no absolute right to see a lawyer but instead vested discretion to grant access to a lawyer with “the Prison Commander [upon] being convinced that the request to see a lawyer was made for the purpose of dealing with the legal affairs of the detainee and that it would not impede the course

representation, or the lawyer might decide to withdraw from representing someone who plans to break the law.”).

79. Olivas, *supra* note 6, at 836.

80. *Id.*

81. For example, Olivas notes several strikes by legal aid lawyers in New York City in 1982 and 1991. *See id.* at 843.

82. *Id.* at 836 (citation omitted).

83. *Id.* at 836.

84. *Id.* at 839–42.

of the investigation.”⁸⁵ Additionally, “The arrest and detention policies [were] allowed by Military Order to be secret, and all Israeli soldiers or police officers [were] authorized to make warrantless arrests.”⁸⁶ Also, “suspects need not be brought before a judge for eighteen days, and with an extension hearing before a military judge, six months of detention can be ordered unless charges have been filed; [and] there are no deadlines for the state to try a case.”⁸⁷

These were some of the conditions that led to the lawyers’ “many attempts to bring problems to the attention of IDF officials, Israeli Bar officers, and court administration,” before deciding that “they had no choice but to strike.”⁸⁸ Their first work stoppage began on January 3, 1989, and “they returned to the courts on March 12. By July 1989, conditions for the lawyers and their clients had deteriorated to the extent that they felt compelled to call another strike, which lasted from July 20 to August 20, 1989.”⁸⁹ In essence, their demands were for conditions that would make it possible to meaningfully represent detained individuals in military courts.⁹⁰ In Olivas’s estimation, “It is far from clear what alternatives they had, or what effect their work stoppage had on their working conditions.”⁹¹ He continues, “[S]ome conditions improved slightly as a result of the publicity, but the underlying political causes remained unresolved.”⁹²

Perhaps because the idea of unionized lawyers seems paradoxical (although some lawyers in the United States are unionized),⁹³ or perhaps because the possibility that lawyers might

85. Olivas, *supra* note 6, at 837 (citation omitted).

86. *Id.* at 839 (citation omitted).

87. *Id.* (citation omitted).

88. *Id.*

89. *Id.* (citation omitted).

90. *Id.*

91. *Id.* at 841.

92. *Id.*

93. See, e.g., Christine Clark, *Should Lawyers Unionize?*, LIFE OF THE LAW (Jan. 8, 2014), <http://www.lifeofthelaw.org/2014/01/should-lawyers-unionize/>; *Legal Services Staff Association UAW/NOLSW 2320*, <http://lssa2320.org> (last visited June 25, 2015); Molly McDonough, *Should Lawyers Form their own Unions?*, ABA J. (Mar. 11, 2009), http://www.abajournal.com/news/article/should_lawyers_form_their_own_unions; Mitchell H. Rubinstein, *Attorney Labor Unions*, NYSBA J. (Jan. 2007), <http://papers.ss>

refuse to represent individuals in order to protest a particular jurisdiction or venue seems unthinkable, taboo, or verboten, I find Olivas's description of the 1989 lawyers' strike against the IDF military courts provocative and generative. The idea of striking lawyers feels particularly powerful when counterpoised against the past and present policies, and conditions of detention for Central American women and children seeking asylum in the United States. A lawyers' strike might also be an effective strategy against recent mass detention practices for people from other Latin American countries.

Consider, for example, the judicial proceedings following the May 2008 ICE raid at the Agriprocessors, Inc. meat processing plant in Postville, Iowa, which the United States District Court for the Northern District of Iowa held in two trailers and a ballroom at the National Cattle Congress in Waterloo, Iowa.⁹⁴ Despite the fact that the judicial process blatantly violated fundamental due process rights,

rn.com/sol3/papers.cfm?abstract_id=955039; UAW LOCAL 2320 NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS, <http://nolsw.org> (last visited June 25, 2015).

94. CAMAYD-FREIXAS, *supra* note 42, at 6 ("The NCC is a 60-acre cattle fairground that had been transformed into a sort of concentration camp or detention center. Fenced in behind the ballroom / courtroom were 23 trailers from federal authorities, including two set up as sentencing courts[.]"). See also Donna Ackermann, *A Matter of Interpretation: How the Language Barrier and the Trend of Criminalizing Illegal Immigration Caused a Deprivation of Due Process Following the Agriprocessors, Inc. Raids*, 43 COLUM. J.L. & SOC. PROBS. 363 *passim* (2010); Sioban Albiol, R. Linus Chan & Sarah J. Diaz, *Re-Interpreting Postville: A Legal Perspective*, 2 DEPAUL J. FOR SOC. JUST. 31 *passim* (2008); Erik Camayd-Freixas, *Raids, Rights and Reform: The Postville Case and the Immigration Crisis*, 2 DEPAUL J. FOR SOC. JUST. 1 *passim* (2008); Jennifer M. Chacón, *Managing Migration Through Crime*, 109 COLUM. L. REV. SIDEBAR 135, 143–45 (2009); Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U. L. REV. 1281, 1301–04 (2010); Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 LAW & CONTEMP. PROBS. 1, 30–34 (2009); Johnson, *Racial Profiling in America*, *supra* note 73, at 1041–42; Allison L. McCarthy, Note, *The May 12, 2008 Postville, Iowa Immigration Raid: A Human Rights Perspective*, 19 TRANSNAT'L L. & CONTEMP. PROBS. 293 *passim* (2010); Peter R. Moyers, *Butchering Statutes: The Postville Raid and the Misinterpretation of Federal Criminal Law*, 32 SEATTLE U. L. REV. 651 *passim* (2009); Robert R. Rigg, *The Postville Raid: A Postmortem*, 12 RUTGERS RACE & L. REV. 271 *passim* (2011); Khari Taustin, *Still in "The Jungle": Labor, Immigration, and the Search for a New Common Ground in the Wake of Iowa's Meatpacking Raids*, 18 U. MIAMI BUS. L. REV. 283, 304–09 (2010).

not a single lawyer, nor judge, involved in those proceedings effectively protested the mass adjudications of around three hundred people—“mostly illiterate Guatemalan peasants with Mayan last names.”⁹⁵ As the federally certified interpreter, Dr. Erik Camayd-Freixas, testified in July 2008 before the Congressional Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, the judicial process following the Postville raid was rife with problems, including *inter alia*:

(2) The court failed to maintain physical separation and operational independence from the ICE prosecution. (3) There was inadequate access to legal counsel.... (5) At initial appearance there was no meaningful presumption of innocence. (6) Many defendants did not appear to understand their rights, particularly the meaning and consequences of waiving their right to be indicted by a grand jury. (7) There was no bail hearing, as bail was automatically denied pursuant to an immigration detainer. (8) The heavier charge of aggravated identity theft, used to leverage the Plea Agreement, was lacking in

95. CAMAYD-FREIXAS, *supra* note 42, at 6. While 697 arrest warrants were sworn out, “late shift workers had not arrived, so ‘only’ 390 were arrested: 314 men and 76 women; 290 Guatemalans, 93 Mexicans, four Ukrainians, and three Israelis who were not seen in court.” *Id.* at 7. *See also id.* at 9 (explaining how the prosecution and court circumvented the writ of *habeas corpus* by expediting the defendants’ arraignments); Kristina M. Campbell, *Imagining a More Humane Immigration Policy in the Age of Obama: The Use of Plenary Power to Halt the State Balkanization of Immigration Regulation*, 29 ST. LOUIS U. PUB. L. REV. 415, 444 (2010) (noting egregious due process violations in the Postville raid); Chacón, *supra* note 94, at 145–47 (identifying three corrosive effects of mass plea proceedings on the administration of justice); Adam B. Cox & Cristina M. Rodríguez, *The President and Immigration Law*, 119 YALE L.J. 458, 531 n.243 (2009) (commenting on the recent deflation of due process even when immigrants are ostensibly accorded formal criminal procedural protections in worksite raids); Eagly, *supra* note 94, at 1304 (noting that the “short-fuse exploding plea offer precluded meaningful evaluation by defense attorneys of whether . . . immigration relief might be possible”); McCarthy, *supra* note 94, at 298–301 (critiquing a judicially-imposed one-week deadline for defense counsel to accept a uniform plea agreement); Moyers, *supra* note 94, at 652–53 (arguing that the accelerated judicial process was premised upon two flawed interpretations of federal law).

foundation and never underwent the judicial test of probable cause. (9) Many defendants did not appear to understand their charges or rights, insisting that they were in jail for being in the country illegally (and not for document fraud or identity theft), and insisting that they had no rights. (10) Many defendants did not know what a Social Security Number is or what purpose it serves. Because "intent" was an element of each of the charges, many were probably not guilty, but had no choice but to plead out.⁹⁶

Camayd-Freixas elaborated:

Echoing what I think was the general feeling, one of my fellow interpreters would later exclaim: "When I saw what it was really about, my heart sank. . . ." Then began the saddest procession I have ever witnessed, which the public would never see, because cameras were not allowed past the perimeter of the compound (only a few journalists came to court the following days, notepad in hand). Driven single-file in groups of 10, shackled at the wrists, waists and ankles, chains dragging as they shuffled through, the slaughterhouse workers were brought in for arraignment, sat and listened through headsets to the interpreted initial appearance, before marching out again to be bused to different county jails, only to make room for the next row of 10.⁹⁷

Legal scholars have subsequently accorded with many of the initial impressions of Camayd-Freixas and his colleague (and myself) that the Postville raid blatantly violated due process and other constitutional guarantees.⁹⁸ Indeed, the following year the United States Supreme Court, in *Flores-Figueroa v. United States*, held that prosecutors of the federal felony of identity theft, under which the

96. CAMAYD-FREIXAS, *supra* note 42, at 3–4.

97. *Id.* at 6.

98. See sources cited *supra* note 95.

Agriprocessors, Inc. workers were charged, must “show that the defendant *knew* that the means of identification at issue belonged to another person.”⁹⁹ In other words, the federal crime of identity theft has a restrictive *mens rea* requirement. While the United States Courts of Appeal for the Eighth Circuit held a different view at the time of the adjudication of the Postville raid,¹⁰⁰ Olivas’s case study on the risk of terminated representation provides an empowering “counter-memory” that lawyers, and other agents of the judicial process, need not accede in “helping legitimize or even abetting the INS [now ICE] in its pernicious practices.”¹⁰¹ While some people might excuse the Postville raid prosecutors and judges for simply applying controlling case law to the National Cattle Congress proceedings,¹⁰² history may

99. *Flores-Figueroa v. United States*, 556 U.S. 646, 657 (2009) (“We conclude that § 1028A(a)(1) requires the Government to show that the defendant knew that the means of identification at issue belonged to another person.”) (emphasis added). For discussions of *Flores-Figueroa*, see Campbell, *supra* note 95, at 444 nn.174–75; Chacón, *supra* note 94, at 144 n.52; Evelyn H. Cruz, *Competent Voices: Noncitizen Defendants and the Right to Know the Immigration Consequences of Plea Agreements*, 13 HARV. LATINO L. REV. 47, 49 n.175 (2010); Eagly, *supra* note 94, at 1303 n.133; Rigg, *supra* note 94, at 274 n.19.

100. See Moyers, *supra* note 94, at 662 (“The application of § 1028A(a)(1) was proper, however, because in the Eighth Circuit [at the time of the adjudication of the Postville raid in May 2008], the Government need not prove that a defendant knew that the means of identification the defendant transferred, used, or possessed belonged to another actual person.”). Moyers was “a judicial clerk in the Northern District of Iowa during the criminal process in Waterloo, Iowa, following the raid at Agriprocessors in Postville.” *Id.* at 651.

101. Olivas, *supra* note 6, at 835. On the concept of counter-memory, see GEORGE LIPSITZ, *TIME PASSAGES: COLLECTIVE MEMORY AND AMERICAN POPULAR CULTURE* 213–14, 228–31 (1990) (defining counter-memory as “a way of remembering and forgetting that starts with the local, the immediate, and the personal. . . . [looking] to the past for the hidden histories excluded from dominant narratives. . . . [to] reframe and refocus dominant narratives purporting to represent universal experience”).

102. But see Julia Preston, *Immigrants’ Speedy Trials After Raid Become Issue*, N.Y. TIMES (Aug. 9, 2008), http://www.nytimes.com/2008/08/09/us/09immig.html?pagewanted=all&_r=0 (reporting on criticism following the revelation of a 117-page manual prepared by the district court to expedite the prosecutions following the Postville raid, which “included a model of the guilty pleas that prosecutors planned to offer as well as statements to be made by the judges when they accepted the pleas and handed down sentences”).

view the defense lawyers less charitably.¹⁰³ They seem to have allowed themselves to become complicit in an extraordinary judicial travesty that required the formal participation of defense lawyers, yet only a single one of them objected meaningfully by refusing to comply with the process at its start.¹⁰⁴

Camayd-Freixas himself wrestled with this dilemma, explaining:

I seriously considered withdrawing from the assignment for the first time in my 23 years as a federally certified interpreter, citing conflict of interest.... The question was did I have one. Well, at that point there was not enough evidence to make that determination.... Moreover, as a professor of interpreting, I have confronted my students with every possible conflict scenario, or so I thought. The truth is that nothing could have prepared me for the prospect of helping our government put hundreds of innocent people in jail. In my ignorance and disbelief, I reluctantly decided to stay the course and see what happened next.¹⁰⁵

Although Professor Camayd-Freixas is probably not exceptional for having seriously scrutinized his professional ethics following the Postville raid, his decision not only to witness the entire extraordinary judicial process but also to write publicly and to testify before

103. *But see* Moyers, *supra* note 94, at 673–81 (discussing the attorney negotiations over the Postville raid plea agreements). *See also infra* notes 108 and 118, and accompanying text (noting the defense attorneys' deliberation over collectively rejecting the plea offers and requesting trials for each of the 305 clients criminally charged after the raid).

104. *See* Moyers, *supra* note 94, at 665–67 (discussing how the district court selected the approximately twenty defense attorneys from its Criminal Justice Act panel, and noting that one of them refused the assignment); Preston, *supra* note 102 ("One defense lawyer who received the scripts from prosecutors on the day of the raid said he became convinced that the hearings had been organized to produce guilty pleas for the prosecution. As a result, the lawyer, Rockne Cole, declined to represent any of the arrested immigrants and 'walked out in disgust,' he wrote in a letter to a Congressional subcommittee that is scrutinizing the raid and the legal proceedings that followed.").

105. CAMAYD-FREIXAS, *supra* note 42, at 8.

Congress on it does seem exceptional, if not unique.¹⁰⁶

Even assuming that all of the officers of the court held at the National Cattle Congress in May 2008 reflected deeply on how participating in that extraordinary venue comported (or failed to comport) with their professional responsibilities,¹⁰⁷ history demonstrates that none of them chose to stop or slow down the process by terminating representation. While some of “the defense attorneys discussed among themselves the possibility of collectively rejecting the plea offers and requesting trials for each of the 305 clients criminally charged after the raid[.]”¹⁰⁸ the idea of a work stoppage or work slowdown *by terminating representation* appears not to have been contemplated. I find this unfortunate, for if any of the lawyers, other officers of the court, or even essential court personnel had struck or slowed down the court at the National Cattle Congress, they might have triggered a remedy under *habeas corpus* and thereby led to a better result for the people whom ICE detained and subjected to criminal prosecution, as well as for the overall rule of (authority under) law.¹⁰⁹

106. See CAMAYD-FREIXAS, *supra* note 42, at 2–3, 8 (discussing Camayd-Freixas’s deliberations on his duty as a court interpreter under Federal Criminal Code and Rules, Rule 604 (1989)). See also Moyers, *supra* note 94, at 651 (noting that Moyers was a judicial clerk in the Northern District of Iowa during the criminal process in Waterloo, Iowa, following the raid at Agriprocessors in Postville).

107. See CAMAYD-FREIXAS, *supra* note 42, at 13–14 (reporting Camayd-Freixas’s conversation with a U.S. District Court judge regarding their deliberation over the decision to charge the Postville defendants with aggravated identity theft, when so many of them lacked knowledge of the identities that they were alleged to have stolen).

108. Moyers, *supra* note 94, at 680 (citation omitted).

109. The people detained under alleged violation of the immigration laws and charged with felony identity theft could have received a fair trial on the merits, or at least a plea bargain that was actually, as opposed to merely formally, voluntary. See Moyers, *supra* note 94, at 674 (“Based on the evidence available to me, the plea agreements were the product of a subtle systemic coercion; . . . The plea agreements were not coerced in a strict sense; the terms were negotiable and the plea agreements were entered into voluntarily. The presence of a negotiable and voluntary agreement for each defendant, however, did not create meaningful free choice.”). See also Ackermann, *supra* note 94, at 393–34 (discussing how a narrative-based colloquy would have forced the court to address whether an indigenous language-speaking defendant actually understood the proceedings when translated into Spanish); Eagly,

While it might seem uncharitable to criticize the attorneys who agreed to represent the people who were detained and arrested in the Postville raid, the district court's adjudication at the National Cattle Congress recalls Olivas's question, "What do we [lawyers] do when the state regime is the law breaker?"¹¹⁰ One response might be simply to show up and do one's job, to the best of one's ability within the myriad constraints of the law and the situation. Lawyers who seriously consider Professor Olivas's case study on the Arab and Israeli lawyers, who confronted the risk of terminated representation by deciding collectively to strike IDF tribunals in 1989, might answer differently. Such lawyers might organize themselves in order to create the conditions where they (we?) could collectively cry out, "¡Huelga!" (Strike!), or if a full work stoppage seemed strategically unsound, then such lawyers might instead whisper for a work slowdown, perhaps through a concerted "work-to-rule" action or another form of "uncivil obedience,"¹¹¹ especially when confronted

supra note 94, at 1303 ("By the time the Supreme Court . . . interpreted the aggravated identity theft statute so that it could not be used . . . as prosecutors did in Postville . . . the Postville defendants had already served their time and been deported.") (citation omitted); Rigg, *supra* note 94, at 278 ("Again, the focus of the manual [used to adjudicate the Postville raid defendants] was on speed and ease of processing clients into guilty pleas rather than any concern for effective representation and adequate research and investigation by defense counsel."). The legal system as a whole could have avoided the corrosive tarnish that comes with papering over gross injustices. *Accord* Albiol et al., *supra* note 94, at 98–99 ("Taken as a whole, it seems that the fast-track process was . . . a comprehensive failure to protect the integrity of our judicial system . . . thereby boosting their funding numbers – while circumventing the individuals' rights to due process of law."); Camayd-Freixas, *supra* note 94, at 12 ("In Postville, with the fast-track criminalization of workers, DHS/ICE was also seen to co-opt and gain deterministic control over the judiciary[.]"); Chacón, *supra* note 94, at 145–47 (discussing three kinds of corrosive effects from the mass plea agreement procedures of and following the Postville raid, such as those deployed under "Operation Streamline," which *United States v. Roblero-Solis*, 588 F.3d 692 (9th Cir. 2009), held to have violated Federal Rule of Criminal Procedure 11). See generally PETER LINEBAUGH, THE MAGNA CARTA MANIFESTO: LIBERTIES AND COMMONS FOR ALL 17, 212–13 (2008) (discussing the notion of "authority under law," or that "the King is, and shall be, below the law").

110. Olivas, *supra* note 6, at 835.

111. See Jessica Bulman-Pozen & David E. Pozen, *Uncivil Obedience*, 115 COLUM. L. REV. 809, 872 n.65 (2015) (citing JEREMY BRECHER, STRIKE! 251 (revised ed. 2014) for

with a judicial process that seems all too hasty.

Of course, a work stoppage or work slowdown might violate a lawyer's professional ethics, and Professor Olivas anticipated this possibility in his 1991 essay.¹¹² As he noted, "if a refusal to participate would sabotage the [judicial] process, there would be a swift deployment of contempt citations or Rule 11 sanctions, and likely disciplinary action taken against the lawyers."¹¹³ For example, earlier in his essay, Olivas noted how Rule 11 sanctions were brought against two of his heroes, NAACP Legal Defense and Education Fund ("LDF") director Julius Chambers and famed radical lawyer William Kunstler.¹¹⁴ Rule 11 sanctions were levied against Chambers, and upheld by the Fourth Circuit Court of Appeals, "for charges

the proposition that "work slowdowns and work-to-rule actions were common labor tactics in 1930s and were variously called 'the conscious withdrawal of efficiency,' 'striking on the job,' or 'sabotage'"). See also WE ARE EVERYWHERE: THE IRRESISTIBLE RISE OF GLOBAL ANTICAPITALISM 457 (Notes from Nowhere ed., 2003), <http://www.weareeverywhere.org>, cited in Bulman-Pozen & Pozen at 818 n.32 ("The notion of the work-to-rule is brilliantly simple—workers follow every rule, no matter how foolish, inefficient, or ill-advised. They break no laws, cause as much disruption as a strike, yet everyone still gets paid!").

112. Olivas, *supra* note 6, at 842–46 (discussing how United States professional norms and disciplinary codes, as exemplified by the then-new Texas Disciplinary Rules of Professional Conduct, would likely subject striking lawyers to professional discipline under rules designed to reduce dilatory tactics and unreasonable courtroom behavior).

113. *Id.* at 842. See also *id.* at 818–19, 842–46.

114. *Id.* at 818. For more on Julius LeVonne Chambers (Oct. 6, 1936–Aug. 2, 2013), see April Dudash, *Julius Chambers, Former NCCU Chancellor, Dies*, HERALD SUN (Aug. 3, 2013), <http://www.heraldsun.com/news/x807783733/Julius-Chambers-former-NCCU-chancellor-dies>; Douglas Martin, *Julius Chambers, a Fighter for Civil Rights, Dies at 76*, N.Y. TIMES (Aug. 6, 2013), <http://www.nytimes.com/2013/08/07/us/julius-chambers-a-fighter-for-civil-rights-dies-at-76.html>; *Julius L. Chambers Papers*, J. MURRAY ATKINS LIBRARY UNIV. OF N. CAROLINA AT CHARLOTTE, <http://library.uncc.edu/manuscript/ms0085> (last visited June 29, 2015). For more on William Moses Kunstler (July 7, 1919–Sept. 4, 1995), see WILLIAM KUNSTLER: DISTURBING THE UNIVERSE (Emily Kunstler and Sarah Kunstler dirs., 2010); WILLIAM M. KUNSTLER, MY LIFE AS A RADICAL LAWYER (1994); DAVID LANGUN, WILLIAM M. KUNSTLER: THE MOST HATED LAWYER IN AMERICA (1999); David Stout, *William Kunstler, 76, Dies; Lawyer for Social Outcasts*, N.Y. TIMES (Sept. 5, 1995), <http://www.nytimes.com/1995/09/05/obituaries/william-kunstler-76-dies-lawyer-for-social-outcasts.html>.

stemming from an employment discrimination case brought by the LDF against the United States Army.”¹¹⁵ Kunstler’s attorneys were subjected to sanctions sought by opposing counsel after he “filed suit against prosecutors and public officials in North Carolina, alleging harassment of Native Americans during a criminal investigation.”¹¹⁶

Thus, as Olivas explains through an exploration of the then-recently adopted Texas Disciplinary Rules of Professional Conduct, with only a few narrow exceptions, the risk of incurring court sanctions and/or professional discipline would likely deter lawyers’ work stoppages in the United States. For example, Olivas explains relevant portions of Texas State Bar Rule 3.04 (modeled after American Bar Association Model Rule 3.4), which:

requires that a Texas lawyer not “engage in conduct intended to disrupt the proceedings” or “knowingly disobey, or advise the client to disobey, an allegation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client’s willingness to accept any sanctions arising from such disobedience.”¹¹⁷

Under such a regime, lawyers contemplating a work stoppage or work slowdown “out of principle rather than apathy” (as Olivas characterized the *status quo ante* as to the nonrepresentation of unaccompanied refugee children in 1991) would need to refuse openly to proceed at all, or at least at the rate demanded. Further, they would need to argue that no valid obligation exists to proceed at all (an argument certain to fail), or at the rate demanded (an argument with a fighting chance), or that their clients were willing to accept the sanctions arising from such disobedience (an argument that seems unlikely given the vulnerability of detained immigrant workers facing punishment for alleged federal felonies).

Notwithstanding what actually transpired in 2008, imagine if the Postville raid defense lawyers had struck the courts at the National

115. Olivas, *supra* note 6, at 818 (citation omitted).

116. *Id.* (citation omitted).

117. *Id.* at 845 (citing TEX. GOV’T CODE ANN. § 9 (Tex. Stat Bar Rule 3.04(c)(5), (d))).

Cattle Congress.¹¹⁸ They likely would have faced a disciplinary proceeding under the Iowa Rules of Professional Conduct, Rule 32:3.2, “A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client[,]” or Rule 32:3.5(d), “A lawyer shall not . . . engage in conduct intended to disrupt a tribunal.”¹¹⁹ Alternatively, such lawyers might be subjected to discipline under Rule 32:3.4(c), “A lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists[.]”¹²⁰

Of course, the hypothetically striking lawyers could assert that their conduct comports with the Iowa Rule 32:3.4 exception, as “an open refusal based on an assertion that no valid obligation exists;” however, as noted above, such an argument seems doomed to fail for an outright work stoppage, and it is unclear if it would be persuasive even as to a work slowdown—unless the slowdown took the form of a work-to-rule action (discussed below). Also, Rule 32:3.2 and Rule 32:3.5 lack any similar express exception. Moreover, even if the striking lawyers were ultimately not sanctioned for a violation of professional responsibility, they would very likely be immediately subject to punishment for contempt of court.

Indeed, Olivas concludes his case study of the risk of terminated representation by musing that “striking lawyers held in contempt would likely find themselves incarcerated, with their only avenue of appeal [being] a habeas corpus proceeding.”¹²¹ While the courts might grant the clients of striking lawyers time to secure new counsel, “the clients’ principles of noncompliance would be undermined . . .

118. According to a judicial clerk who participated in the criminal process conducted by the Northern District of Iowa at the National Cattle Congress after the Postville raid, some of “the defense attorneys discussed among themselves the possibility of collectively rejecting the plea offers and requesting trials for each of the 305 clients criminally charged after the raid.” Moyers, *supra* note 94, at 680 (citation omitted).

119. Iowa R. Civ. P. 32:3.2 (adopted Apr. 20, 2005, effective July 1, 2005); Iowa R. Civ. P. 32:3.5(d) (adopted Apr. 20, 2005, effective July 1, 2005).

120. Iowa R. Civ. P. 32:3.4(c) (adopted Apr. 20, 2005, effective July 1, 2005).

121. Olivas, *supra* note 6, at 846.

while the real injury would fall on the lawyers' head."¹²² Clearly, it would take extraordinary circumstances to justify such an action, yet the flawed judicial process following the Postville raid of May 2008 arguably constituted precisely the extraordinary circumstances that could justify a work stoppage, or even better, a principled work-to-rule slowdown of the judicial process in order to secure a better result—for the people whom ICE detained and subjected to criminal prosecution—as well as for the overall rule of (authority under) law.¹²³

Returning to the hypothetical lawyers' work-to-rule slowdown, precisely because "ICE agents had sought *Miranda* waivers from each of the workers at the Agriprocessors plant and interviewed each about his or her immigration status"¹²⁴ prior to them having a chance to meet with an attorney, the defense attorneys might have challenged the validity of the *Miranda* waivers at their clients' initial appearances. Additionally, or in the alternative, the lawyers might have advised their clients to reject the waiver of indictment in the proposed plea agreement.¹²⁵ Ultimately, it appears that the initial appearances provided the lawyers with the critical opportunity to object meaningfully to the overly hasty judicial process. This was the time for a strike, or at least a work-to-rule slowdown, of the judicial process at the National Cattle Congress. Denied any meaningful opportunity to meet with their clients prior to the initial appearances, and being presented with client discovery files containing purported *Miranda* waivers and summaries of statements made to ICE agents,¹²⁶ the approximately twenty lawyers might have openly refused to obey the rules of the district court at the National Cattle Congress by asserting that no valid obligation existed for the initial appearances to be so truncated as to violate fundamental rights to due process or the venerable writ of *habeas corpus*.¹²⁷ Instead of acceding to the court's

122. Olivas, *supra* note 6, at 846.

123. See *supra* note 109 and accompanying text.

124. Moyers, *supra* note 94, at 668 (citation omitted).

125. See Moyers, *supra* note 94, at 669. See also Rigg, *supra* note 94, at 278 (discussing prosecution by information and by indictment).

126. See Moyers, *supra* note 94, at 669–70.

127. See sources cited *supra* note 94.

(and prosecutors') demands, the defense lawyers collectively might have demanded a meaningful opportunity to meet with their clients *prior* to the initial appearances. If they had done so, it is almost certain that the court at the National Cattle Congress would not have been able to process the approximately 300 criminal defendants within the limit of *habeas corpus*—to be arraigned within seventy-two hours of their arrest.¹²⁸

In history, of course, neither a strike, nor a slowdown occurred. Instead, the court process proceeded as quickly as it had been designed to function,¹²⁹ and the defendants were all sentenced within ten days of the May 12, 2008, Postville raid.¹³⁰ While this course of conduct may have comported with the Iowa Rules of Professional Conduct, in light of Professor Olivas's case studies on the risk of terminated and truncated representation, I find this result profoundly unfortunate for two reasons.

First, it seems likely that knowledge of possible court sanctions and/or professional discipline worked to deter the defense lawyers from enacting their contemplated work-to-rule slowdown.¹³¹ While the four lawyers who agreed to be interviewed on the matter explained that their clients desired speedy resolutions and certainty

128. *Accord* CAMAYD FREIXAS, *supra* note 42, at 9 ("While we waited to be admitted, the attorney pointed out the reason why the prosecution wanted to finish arraignments by 10am Thursday: according to the *writ of habeas corpus* they had 72 hours from Monday's raid to charge the prisoners or release them for deportation[.]"); Moyers, *supra* note 94, at 669 ("To avoid habeas problems, the USAO was required to charge a defendant within 72 hours of arrest at the raid.") (citation omitted). *See also* Eagly, *supra* note 94, at 1304–05 (discussing constitutional and statutory limits on the pretrial detention of people arrested without a warrant, and the rights of criminal defendants, including noncitizens, under the Bail Reform Act of 1984). *See generally* LINEBAUGH, *supra* note 109 (discussing the origins of *habeas corpus*).

129. *See* Moyers, *supra* note 94, at 675–82 (discussing the truncated processes of plea negotiations, plea hearings, and sentencing hearings).

130. *See* CAMAYD-FREIXAS, *supra* note 42, at 2 (noting that the hearings started on May 13, 2008 and ended on May 22, 2008).

131. *See supra* note 108 and accompanying text (noting the lawyers' contemplation of collectively rejecting the proposed plea agreements and requesting trials for all of the defendants).

regarding their terms of punishment,¹³² by the time that the lawyers were attempting to negotiate favorable plea agreements, the critical moment of the defendants' initial appearances had already passed, and with it the best chance for an effective work-to-rule slowdown was lost.

Second, and as important, the mechanistic—albeit, formal—judicial process enacted at the National Cattle Congress following the Postville raid featured egregious violations of due process and other constitutional protections, which enabled the government to propagate legal violence,¹³³ primarily by judicial mistreatment, with concomitant corrosive effects on the democratic justifications of the rule of “authority under law.”¹³⁴

Among myriad others, Minow and Olivas have expressed concerns for the institutional role of the courts in justifying democratic rule.¹³⁵ For example, Minow opined:

Consent to be governed, one might argue, must be withheld in the face of the competing demands of equally

132. See Moyers, *supra* note 94, at 675–77, 680–81.

133. In theorizing how protest, repression and race functioned in the Chicano Movement, Ian Haney López explains, “Judicial bias and police malpractice together imposed a reign of legal violence on East Los Angeles . . . Many Chicanos insisted that legal violence against the Mexican community proved that Mexicans were non-white . . . ‘Law’ for Chicanos . . . means the police and the courts, and legal violence refers principally to the physical force these institutions wield. Law carried out on the streets—as opposed to law on the books—convinced many Mexicans that they were Chicanos.” HANEY LÓPEZ, *supra* note 23, at 8–9. See also Ian F. Haney López, *Protest, Repression, and Race: Legal Violence and the Chicano Movement*, 150 U. PA. L. REV. 205, 207 (2001) (“I contend in this Article that legal violence, encompassing both judicial mistreatment and police brutality, substantially contributed to the emergence of a Chicano movement that stressed a non-White Mexican identity.”).

134. Accord Chacón, *supra* note 94, at 145–47 (discussing three corrosive effects of mass plea agreement proceedings). See also LINEBAUGH, *supra* note 109, at 17, 212–13 (discussing the notion of “authority under law”). But see ERWIN CHEMERINSKY, *THE CASE AGAINST THE SUPREME COURT* 5 (2014) (“the Court has frequently failed, throughout American history, at its most important tasks, at its most important moments . . . Now, and throughout American history, the Court has been far more likely to rule in favor of corporations than workers or consumers; it has been far more likely to uphold government abuses of power than to stop them.”).

135. See Minow, *supra* note 10, at 738; Olivas, *supra* note 6, at 856.

important or even more important principles and allegiances. Or else one might urge that consent to the government's authority must be earned continually and anew.¹³⁶

Notwithstanding his approval of these principles, however, Olivas noted, "this view assumes a fundamental fairness, competition in the marketplace of ideas, and participation in the polity."¹³⁷ He continued:

In the three case studies above, however, these basic ingredients were lacking: unaccompanied refugee children are victims of proxy wars, a cruel and unjust refugee policy, and inhumane conditions of confinement; thousands of Palestinians, especially Palestinian children, find themselves enmeshed in an oppressive situation not of their own making, under a rule of power, not of law; and Chicano community organizers found no satisfaction in their formal complaints about inadequate educational conditions, and were judged not by a grand jury chosen from their peers.¹³⁸

The judicial process at the National Cattle Congress following the Postville raid seems to have presented a similar situation, where the "basic ingredients" were lacking. We cannot know what might have happened had defense lawyers, prosecutors, judges, court interpreters, or other essential court personnel declared a strike or slowdown by terminating representation, or by a principled work-to-rule action. However, we can imagine that in addition to predictable charges of contempt of court and/or professional disciplinary proceedings, their collective action might have garnered exactly the kind of mainstream media coverage that can promote social change by forcing "the [legal] system to confront its political underpinnings."¹³⁹ Indeed, the Postville raid and its flawed judicial

136. Minow, *supra* note 10, at 738.

137. Olivas, *supra* note 6, at 856.

138. *Id.*

139. *Id.* at 854.

process received substantial scrutiny by the mainstream media.¹⁴⁰ If a necessary component of the judicial process (e.g., the defense attorneys) had struck against the court held at the National Cattle Congress, or conducted a work-to-rule slowdown, their jail sentences for contempt of court might have catalyzed the consciousness of the other actors in that surreal venue, awakening them from the cynical and mechanistic process that passed for the “rule of law.”

Even if the defense lawyers failed to persuade their colleagues across the bar (or bench) to join them, had they struck or declared a principled work-to-rule slowdown, they could have avoided complicity with the farce of law that the nominally judicial process following the May 2008 Postville ICE raid now emblemizes.¹⁴¹ Finally, had lawyers, or other legal workers, stopped or slowed down these proceedings in 2008, perhaps the idea of striking against the federal immigration courts in New Mexico and Texas, which have been processing much of the 2014 to 2015 “surge” in Central American women and children seeking asylum in the United States, might be regarded as a potential protest strategy.

Of course, the idea of a work stoppage or work-to-rule slowdown may seem especially wrong for lawyers whose practice focuses on representing immigrants or refugees who have been detained. Beyond general professional duties to provide access to justice by zealously representing the unrepresented, or underrepresented,¹⁴² these lawyers might find the notion of withdrawing from representation, or even momentarily “terminating” representation for the vulnerable class of people who constitute their client base, strategically backwards, morally repugnant, or even antithetical to their basic commitments as lawyers. Additionally, some scholars of legal ethics believe that lawyers have no business violating the law on

140. See, e.g., Preston, *supra* note 102. Accord Eagly, *supra* note 94, at 1301 (“Postville’s large-scale prosecution received enormous media attention[.]”).

141. See sources cited, *supra* notes 94–95.

142. See generally ABA MODEL RULES OF PROFESSIONAL CONDUCT, at Preamble (6), (9) (1983), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

principle.¹⁴³ Others argue that lawyers, in particular, have a special duty to protest conditions that are ostensibly under the color of law but which they perceive as violating a superior law (e.g., rights guaranteed under the United States Constitution).¹⁴⁴

I argue, in light of the terrible histories of mass detentions within and mass deportations from the United States (e.g., Japanese Internment during World War II and 1954's Operation Wetback),¹⁴⁵ that lawyers, and other officers of the court, who encounter mass detentions and mass prosecutions in the twenty-first century should think seriously about past instances when lawyers struck against a

143. See, e.g., Kathryn Abrams, *Lawyers and Social Change: Confronting a Plural Bar*, 52 U. PITT. L. REV. 753, 756–60 (1991) (surveying “arguments against lawyers’ involvement in social change lawbreaking”).

144. See, e.g., *id.* at 761–66 (discussing the views of lawyers who work with historically oppressed client groups in hopes of generating legal and social change, including Bill Robinson of the NAACP Legal Defense Fund, Bob Gnaizda of the California Rural Legal Assistance Program, Mary Kaufman of the National Lawyers Guild Mass Defense Office, Ken Cockrel of the Black Workers Congress, Charles Garry, legal counsel to the Black Panther Party, Sheila Okpaku of the Community Law Office in Harlem, and Oscar Acosta of the Chicano Movement). Abrams draws her discussion of these lawyers’ views primarily from MARLISE JAMES, *THE PEOPLE’S LAWYERS* (1973). For a contemporary collection of interviews with lawyers who represented people seeking social change, see ANN FAGAN GINGER, *THE RELEVANT LAWYERS* (1972). For a recent and influential work on these themes, see *CAUSE LAWYERS AND SOCIAL MOVEMENTS* (Austin Sarat & Stuart A. Scheingold eds., 2006).

145. On Japanese Internment, see *Korematsu v. United States*, 323 U.S. 214 (1944); *PERSONAL JUSTICE DENIED*, *supra* note 26, at *passim*; Anderson et al., *supra* note 8, at 1944 (contextualizing the special registration of resident immigrants following September 11, 2001, within the mass internment of Japanese Americans in the 1940s and the mass deportation of Mexican Americans in the 1930s and 1950s); Dale Minami et al., *Sixty Years after the Internment: Civil Rights, Identity Politics, and Racial Profiling*, 11 ASIAN L.J. 151 *passim* (2004) (discussing the historical relevance of the internment of Japanese Americans following the December 7, 1941, attack on Pearl Harbor for the “war at home” following September 11); Natsu Taylor Saito, *Beyond the Citizen/Alien Dichotomy: Liberty, Security, and the Exercise of Plenary Power*, 14 TEMP. POL. & CIV. RTS. L. REV. 389, 401–03 (2005) (arguing that the internment of Japanese Americans provide “the most directly applicable precedents for the post-September 11th arbitrary and indefinite detention and interrogation of at least two U.S. citizens, Yaser Esam Hamdi and Jose Padilla”). On Operation Wetback, see MIZE & SWORDS, *supra* note 46, at 1–2, 25–40; NGAI, *supra* note 26, at 155–56; Anderson et al., *supra* note 8, at 1902; González, *supra* note 46, at 7; Olivas, *supra* note 48, at 437–39.

jurisdiction to protest its fundamental judicial failures. While lawyers' strikes or work slowdowns in the United States may be so rare as to seem simultaneously unthinkable and unprofessional, the threads of history that Professor Olivas preserved should not be forgotten. His case study of Arab and Israeli lawyers who confronted an untenable system of military justice that was hastily deployed to process tens of thousands of people could inform *all* lawyers (and other professionals involved in the administration of justice). Indeed, in light of the decade-plus "preventive detention" of people whom the government has declared to be "enemy combatants" and "held" (imprisoned) at the United States military base at Guantánamo, Cuba, *inter alia*, under the suspicion of international terrorism, but without any substantive criminal charge being filed,¹⁴⁶ more lawyers, and other officers of the court, should seriously consider how to collectively confront the risk (and opportunity) of terminated representation.

While this strategy may subject lawyers to court sanctions or professional discipline, "when the state regime is the law breaker"¹⁴⁷ lawyers should not *a priori* rule out the strategy of a work stoppage or declared work-to-rule slowdown, for failing to carefully consider such strategies may well manifest the third risk of representation that Minow articulated and Olivas developed, the risk of truncated representation.

146. See, e.g., CHEMERINSKY, *supra* note 134, at 77–88 (discussing the post-9/11 "preventive detention" cases, *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), *Rasul v. Bush*, 542 U.S. 466 (2004), *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), and *Boumediene v. Bush*, 533 U.S. 733 (2008)); Saito, *supra* note 145, at 400–01, 403–06 (discussing the different detention conditions and judicial procedures accorded to John Walker Lindh, in contrast to Yaser Esam Hamdi and Jose Padilla, and arguing that colonialism, racism, religious discrimination, and theories of "Otherness" explain the different treatment of certain subjects, who despite being United States citizens nevertheless lack the full rights of citizenship). See also Carol Rosenberg, *Detention at Guantánamo Grinds On: 13 Years and Counting*, MIAMI HERALD (Nov. 17, 2014), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article3977792.html>.

147. Olivas, *supra* note 6, at 835.

C. The Risk of Truncated Representation

In the first extended treatment by a scholar writing in a law review, Professor Olivas selected legendary Chicano lawyer Oscar “Zeta” Acosta to discuss the risk of truncated representation.¹⁴⁸ As Minow defined it:

Lawyers who are willing to represent lawbreakers, and who find no obligation to breach the confidences of those clients, may nonetheless betray a contrast between their own perspectives and that of their clients in the course of representation. The grave risk is that lawyers will defend politically motivated lawbreakers in ways that recapitulate the very failure of the legal system that inspired the lawbreaking actions. In other words, there is a danger that the defense will pursue avenues that undermine the client’s purposes or beliefs.¹⁴⁹

Olivas apparently selected Acosta as an exemplar of an attorney who resolved the risk of truncated representation by rebelling—arguably, in an ethical manner—against the politically inspired prosecution of his clients.¹⁵⁰ In Acosta’s grandiose and intransigent words:

No other lawyer has ever cross-examined a hundred judges. There is no precedent, nobody to show me how to do the job. So, as is my custom, I decide to go right for the throat of those dirty old men who sit over us in

148. See Olivas, *supra* note 6, at 846–54. See also Abrams, *supra* note 143, at 766. For additional sources on the life and times of Oscar Z. Acosta, see sources cited, *supra* note 22.

149. Minow, *supra* note 10, at 747.

150. See Olivas, *supra* note 6, at 848 (“These books [authored by Acosta about his representation of Chicano protestors in Los Angeles following their 1968 indictments] certainly fulfill Martha Minow’s criterion of lawyering for the other half.”). See also *id.* at 854 (“Acosta’s defense tactics, challenging the racial composition of the grand jury process . . . led to acquittals of the defendants in both trials on all the major charges. His combination of acute political instincts and deft lawyering did not compromise his clients’ interests, and largely vindicated them.”).

judgment. If they won't give us back our lands, at least we'll have a drop of their blood for our trouble. I'm billed as the only revolutionary lawyer this side of the Florida Gulf. And it's true: I'm the only one who actually hates the *law*.¹⁵¹

In less grandiose but no less intransigent rhetoric, Acosta explained:

I relate to the court system first as a Chicano and only seldom as a lawyer in the traditional sense. I have no respect for the courts and I make it clear from the minute I walk in . . . The one thing I've learned to do is how to use criminal defense work as an organizing tool.... I take no case unless it is, or can become, a Chicano movement case. I turn it into a platform to espouse the Chicano point of view so that that affects the judge, the jury, the spectators.¹⁵²

Twenty-four years later, what can be learned from revisiting

151. Olivas, *supra* note 6, at 853 (quoting ACOSTA, *REVOLT*, *supra* note 22, at 214). See also HANEY LÓPEZ, *supra* note 23, at 30, 33 (discussing the synergy between Acosta's personality, disdain for the legal system, substance abuse, and brilliance for representing the Chicano Movement cases). For another view on "revolutionary lawyering," see William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL'Y 101 (2006). For another Chicano's view on socio-legal struggles for justice within the United States, see, e.g., GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Gerald P. López, *Foreword: Latinos and Latino Lawyers*, 6 CHICANO L. REV. 1 (1983); Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984); Gerald P. López, *The Idea of a Constitution in the Chicano Tradition*, 37 J. OF LEGAL EDUC. 162 (1987); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO L.J. 1603 (1989); Gerald P. López, *Shaping Community Problem Solving around Community Knowledge*, 79 N.Y.U. L. REV. 59 (2004); Gerald P. López, *Keynote Address: Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005). See generally *Rebellious Lawyering Institute*, <http://rebelliouslawyeringinstitute.org> (last visited July 7, 2015). Synthesizing Olivas's essay with López's influential scholarship on rebellious lawyering is beyond the scope of this Article but promises generative future work regarding models of lawyering that were innovated and evolved by Chicana/o, Mexican American, and other Latina/o attorneys.

152. Abrams, *supra* note 143, at 766 (quoting JAMES, *supra* note 143, at 349).

Olivas's case study on Acosta? Because other scholars have produced substantial scholarship on Acosta's lawyering, in particular his constitutional challenge to discriminatory grand jury selection practices in Los Angeles County,¹⁵³ instead of revisiting the details of his flamboyant lawyering strategy and tactics, below I make two observations—the impact of Olivas's scholarship on Acosta and the limited possibilities for Acosta's style of “revolutionary” lawyering today.

First, Olivas's early exploration of this subject likely opened the way for other socio-legal scholars to consider, or reconsider, the impact of Acosta's lawyering, and thus contributed toward informing new generational cohorts of law students and lawyers to learn from Acosta's efforts. For example, in rough chronological order, socio-legal scholars who wrote about Acosta after Olivas include: Richard Delgado and Jean Stefancic, Ian F. Haney López, Mary Romero, Steven W. Bender and Keith Aoki, Anthony V. Alfieri, and Tom I. Romero, II.¹⁵⁴ While some of these scholars may have learned about Acosta from other experiences or textual sources,¹⁵⁵ the inclusion of

153. See, e.g., HANEY LÓPEZ, *supra* note 23, at *passim*; STAVANS, *supra* note 22, at 79–82; Haney López, *supra* note 133, at *passim*; Ian F. Haney López, *Institutional Racism: Judicial Conduct and A New Theory of Racial Discrimination*, 109 YALE L.J. 1717 *passim* (2000); Olivas, *supra* note 6, at 846–54.

154. See, e.g., HANEY LÓPEZ, *supra* note 23, at *passim*; Anthony V. Alfieri, *Color/Identity/Justice: Chicano Trials*, 53 DUKE L.J. 1569 *passim* (2004); Steven W. Bender & Keith Aoki, *Seekin' the Cause: Social Justice Movements and Latcrit Community*, 81 OR. L. REV. 595, 606 (2002); Richard Delgado, *Rodrigo and Revisionism: Relearning the Lessons of History*, 99 NW. U. L. REV. 805, 820–21 (2005); Delgado & Stefancic, *supra* note 73, at 503; Haney López, *supra* note 133, at *passim*; Haney López, *supra* note 153, at *passim*; Mary Romero, *Review Essay: Brown Is Beautiful*, 39 L. & SOC'Y REV. 211 *passim* (2005) [hereinafter Romero, *Brown Is Beautiful*]; Tom I. Romero, II, *The Color of Water: Observations of A Brown Buffalo on Water Law & Policy in Ten Stanzas*, 1 U. MIAMI RACE & SOC. JUST. L. REV. 107, 107, 110, 113 (2011), reprinted in 15 U. DENV. WATER L. REV. 329 (2012) [hereinafter Romero, *Color of Water*]; Jean Stefancic, *Latino and Latina Critical Theory: An Annotated Bibliography*, 85 CAL. L. REV. 1509, 1514, 1560 (1997). See also Alfredo Mirandé, *Rascuache Lawyer: A Paradigm of Ordinary Litigation*, 1 U. MIAMI RACE & SOC. JUST. L. REV. 155, 159, 168–69 (2011) (discussing Acosta as an exemplar of “rascuache lawyering”).

155. In addition to Acosta's two books, ACOSTA, BUFFALO, *supra* note 22, and ACOSTA, REVOLT, *supra* note 22, which are classic texts of Chicana/o Studies, legal

Olivas's essay by Richard Delgado and Jean Stefancic in two annotated bibliographies published in the mid-1990s¹⁵⁶ preceded their excerpting passages from Acosta's autobiographical essay and Olivas's essay for their 1998 book, *The Latino/a Condition: A Critical Reader*, and doubtlessly influenced their later casebook collaborations with Juan F. Perea and others.¹⁵⁷ Independently (judging by citations), Ian F. Haney López's concentrated focus on Acosta's lawyering in two of his articles from the early 2000s,¹⁵⁸ and his book on the subject, *Racism on Trial: The Chicano Fight for Justice*,¹⁵⁹ was not directly informed by Olivas's essay. Subsequent law review scholarship on Acosta has either reviewed Haney López's treatment of Acosta's lawyering,¹⁶⁰ focused on Acosta's constitutional challenge against discriminatory grand jury selection practices,¹⁶¹ or deployed Acosta's literary persona as the Brown Buffalo to innovate LatCrit theory.¹⁶²

Although Oscar "Zeta" Acosta may be obscure to mainstream

scholars who have written about Acosta in law review articles have cited to texts including, *inter alia*, JAMES, *supra* note 143 (published in 1973); STAVANS, *supra* note 22 (published in 1995), and UNCOLLECTED WORKS, *supra* note 22 (published in 1996).

156. See Delgado & Stefancic, *supra* note 73, at 503; Stefancic, *supra* note 154, at 1560.

157. See LATINO/A CONDITION, *supra* note 6, at 320–38 (excerpting Olivas's essay and Acosta's autobiographical essay); LATINOS AND THE LAW, *supra* note 6, at 813–20, 832–40 (same); RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 1212 (Juan F. Perea, Richard Delgado, Angela P. Harris, Jean Stefancic & Stefanie M. Wildman eds., 2000, 2d ed. 2007) (citing UNCOLLECTED WORKS, *supra* note 22; and Olivas, *supra* note 6).

158. Haney López, *supra* note 133; Haney López, *supra* note 153.

159. HANEY LÓPEZ, *supra* note 23. Haney López notes, "I first began this [book] project more than a decade ago while I was still in law school[.]" *Id.* at 312. He earned his J.D. at Harvard Law School in 1991. See Ian F. Haney López 1 (Aug. 2012), <https://www.law.berkeley.edu/php-programs/faculty/facultyCVPDF.php?facID=301> (curriculum vitae). He also notes that in 1992 he spoke with the trial judge in these cases, Los Angeles Superior Court Judge Arthur L. Alarcón. HANEY LÓPEZ, *supra* note 23, at 262 n.118. For biographical information about Judge Alarcón, see sources cited *infra* note 236 and accompanying text.

160. See, e.g., Bender & Aoki, *supra* note 154; Delgado, *supra* note 154; Romero, *Brown is Beautiful*, *supra* note 154.

161. See, e.g., Alfieri, *supra* note 155; Kevin R. Johnson, *Hernandez v. Texas: Legacies of Justice and Injustice*, 25 CHICANO-LATINO L. REV. 153, 182 (2005); Mirandé, *supra* note 154.

162. See Romero, *Color of Water*, *supra* note 154.

legal scholars in the United States, he nevertheless has a place in the minds of lawyers who have considered how to represent politically motivated lawbreakers (to use Minow's evocative phrasing) in ethical ways that will support—not undermine—their clients' purposes and beliefs. In assessing the impact of Olivas's essay, with hopes of broadening its reach in the decades to come, citations show that Olivas's scholarship on Acosta directly informed Richard Delgado and Jean Stefancic, who excerpted Acosta's reflections and Olivas's discussions on how to use legal representation to reinforce clients' principles, purposes, or beliefs.¹⁶³ Thus, Olivas's essay facilitated later generational cohorts of law students (and the lawyers they became) to consider how Acosta used the representation of Chicano Movement activists to confront the legal violence of politically motivated prosecutions that had been tainted by discriminatory court practices pertaining to grand jury selection.¹⁶⁴

Much as the 1989 republication of Acosta's two novels¹⁶⁵

163. See sources cited, *supra* note 154.

164. See Olivas, *supra* note 6, at 850–52 (discussing that the indictments were handed down three months after the Chicano walkouts, which was just before the California primary election in which Los Angeles County District Attorney Evelle Younger was a candidate for state Attorney General). Accord GARCÍA & CASTRO, *supra* note 23, at 199–200 (presenting Sal Castro's beliefs about district attorney Younger's motivation to gain political mileage by indicting the Chicano Movement activists for planning the massive East Los Angeles high school student strikes of 1968 and that the arrests were part of a Republican strategy to discredit Senator Robert Kennedy and Senator Eugene McCarthy, who had expressed public support for the student strikes, by arresting the activists the weekend before the June 4, 1968 primary election); HANEY LÓPEZ, *supra* note 23, at 168 ("At the outset Acosta and the defendants charged that the prosecutions reflected local politics. The arrests fell on the weekend preceding California primary elections."). Following Acosta, Haney López calls this case the *East L.A. Thirteen* and the subsequent case in which Acosta challenged the grand jury indictment of Chicano Movement activists the *Biltmore Six*. See *id.* at 3–4, 31–40. Respectively, their legal citations are *Castro v. Superior Court*, 88 Cal. Rptr. 500 (Cal. App. 2d Dist. 1970) and *Montez v. Superior Court*, 88 Cal. Rptr. 736 (Cal. App. 2d Dist. 1970). See Olivas, *supra* note 6, at 849 n.121, 852 n.139 (noting the case citations). Contemporary journalism on the second case reportedly used the phrase "Biltmore Seven." See Yvette C. Doss, *The Lost Legend of the Real Dr. Gonzo*, L.A. TIMES (June 5, 1998). Haney López prefers "Biltmore Six" because that is the number of people who were ultimately tried. HANEY LÓPEZ, *supra* note 23, at 36.

165. Olivas, *supra* note 6, at 847 n.121.

facilitated the early 1990s research conducted by Olivas, Haney López, and other scholars into Acosta's lawyering in defense of Chicano Movement activists,¹⁶⁶ Olivas's early scholarship on Acosta informed Delgado, Perea, and Stefancic's decision to include excerpts regarding Acosta in their books.¹⁶⁷ While Olivas notes that he first read Acosta's novels shortly after their original publication in 1972 and 1973,¹⁶⁸ their republication provided him with the opportunity to reappraise their significance for lawyering and legal education, to research contemporary and subsequent reviews of the books' literary significance for Chicana/o Studies, and to investigate Acosta's papers.¹⁶⁹ Similarly, several years after the republication of Acosta's novels, Latin America and Latino Studies Professor Ilan Stavans published two books regarding Acosta (in 1995 and 1996).¹⁷⁰ In turn, Acosta's novels and Stavans's books informed Haney López's extensive scholarship on Acosta's self-styled revolutionary Chicano lawyering,¹⁷¹ which together with the books by Delgado and Stefancic,¹⁷² and Delgado, Perea, and Stefancic,¹⁷³ provide a robust set

166. See, e.g., HANEY LÓPEZ, *supra* note 23; STAVANS, *supra* note 22; UNCOLLECTED WORKS, *supra* note 22; Haney López, *supra* note 133; Haney López, *supra* note 153; Olivas, *supra* note 6.

167. See *supra* notes 156–57 and accompanying text.

168. Olivas, *supra* note 6, at 847.

169. See Olivas, *supra* note 6, at 847–48. See also Salvador Güereña, *Guide to the Oscar Zeta Acosta Papers, CEMA 1*, DEPARTMENT OF SPECIAL COLLECTIONS, UNIVERSITY OF CALIFORNIA, SANTA BARBARA LIBRARY (1998), http://www.oac.cdlib.org/findaid/ark:/13030/tf187004xn/entire_text/ (1998).

170. STAVANS, *supra* note 22; UNCOLLECTED WORKS, *supra* note 22.

171. HANEY LÓPEZ, *supra* note 23; Haney López, *supra* note 133; Haney López, *supra* note 153.

172. LATINO/A CONDITION, *supra* note 6.

173. LATINOS AND THE LAW, *supra* note 6. For symposium essays responding to the publication of this casebook, see Rodolfo F. Acuña, *On Pedagogy*, 12 HARV. LATINO L. REV. 7 (2009); Keith Aoki & Kevin R. Johnson, *Latinos and the Law: Cases and Materials: The Need for Focus in Critical Analysis*, 12 HARV. LATINO L. REV. 73 (2009); Steven W. Bender, *Knocked Down Again: An East L.A. Story on the Geography of Color and Colors*, 12 HARV. LATINO L. REV. 109 (2009); Richard Delgado et al., *Author's Reply: Creating and Documenting a New Field of Legal Study*, 12 HARV. LATINO L. REV. 103 (2009); Gerald P. López, *Changing Systems, Changing Ourselves*, 12 HARV. LATINO L. REV. 15 (2009); Michael A. Olivas, *The Art and Science of Casebooks*, 12 HARV. LATINO L.

of resources for lawyers, law students, and others who might be interested in learning from Acosta's style of lawyering today—notwithstanding the seemingly limited possibilities for it—which comprises the second of my two observations on Olivas's case study on Oscar "Zeta" Acosta.

As Olivas noted, Los Angeles Superior Court Judge Arthur L. Alarcón cited Acosta for contempt of court twice during the second of the two Chicano Movement trials in which Acosta challenged the grand jury indictment, *Montez v. Superior Court* (also known as the *Biltmore Six*).¹⁷⁴ Acosta spent a total of seven days in jail for his conduct during that trial.¹⁷⁵ The image and reality of a lawyer in jail under such circumstances did not start, or stop, with Acosta,¹⁷⁶ but his

REV. 1 (2009); Lisa R. Pruitt, *Latina/os, Locality, and Law in the Rural South*, 12 HARV. LATINO L. REV. 135 (2009); Cristina M. Rodríguez, *Latinos: Discrete and Insular No More*, 12 HARV. LATINO L. REV. 41 (2009); Leticia M. Saucedo, *National Origin, Immigrants, and the Workplace: The Employment Cases in LATINOS AND THE LAW and the Advocates' Perspective*, 12 HARV. LATINO L. REV. 53 (2009).

174. Olivas, *supra* note 6, at 854. Accord HANEY LÓPEZ, *supra* note 23, at 38 ("Judge Alarcon twice jailed Acosta for contempt of court."). On the colloquial name for the case, see *supra* note 164.

175. HANEY LÓPEZ, *supra* note 23, at 38.

176. For three examples of lawyers who served time in jail, consider Mahatma Gandhi, Nelson Mandela, and Lynne Stewart. See, e.g., THE CASE OF LYNNE STEWART: A JUSTICE DEPARTMENT ATTACK ON THE BILL OF RIGHTS *passim* (National Lawyers Guild ed. 2005) (discussing the conviction of 65-year-old attorney Lynne Stewart under charges of conspiracy, making false statements, and providing and concealing material support to terrorist activity for issuing a press release regarding her client in 2000); THE GANDHI READER: A SOURCEBOOK OF HIS LIFE AND WRITINGS 59–71 (Homer A. Jack ed., 1994) (discussing Gandhi's first imprisonment, where he was sentenced to hard labor at the Johannesburg, South Africa jail in 1908 for failing to show his registration certificate, which he had burned, in *Satyagraha* resistance to the "Black Act," the Transvaal Asiatic Registration Act of 1906); Stephen Ellmann, *Two South African Men of the Law*, 28 TEMP. INT'L & COMP. L.J. 431, 433–37 (2014) (discussing Nelson Mandela's 1962 trial for leaving South Africa without a passport and inciting people to strike, attainment of his LL.B., and successful defense of his law license while imprisoned at Robben Island); Charles J. Ogletree, Jr., *From Mandela to Mthwana: Providing Counsel to the Unrepresented Accused in South Africa*, 75 B.U. L. REV. 1, 8–9 (1995) (discussing the anti-Apartheid symbolism of Mandela's *pro se* representation against charges of leaving South Africa without a passport and incitement to strike).

punishment for contempt of court provides a sobering reminder of the complexity and insidiousness of legal violence. Indeed, for those who may have found impractical my earlier discussion of the possibilities of a work stoppage by terminated representation or of a work-to-rule slowdown, I call attention to Olivas's assessment of Acosta's lawyering strategies, "Acosta's trial tactics of twenty years ago landed him in jail for contempt. Today, I doubt he could remain licensed for the same strategy, even though the political powerlessness that characterized Latinos in 1970 is even more acute in the 1990s."¹⁷⁷ I agree with Olivas's conclusions, as I find all accounts of Acosta's lawyering audacious and brazen.

Of course, I have never been charged with contempt of court, nor otherwise been threatened directly with jail time, so perhaps Acosta's self-professed hatred for the law is beyond my legal imagination. At the same time, many years before I became a lawyer, I confronted conduct that I interpreted as racially motivated police harassment, as well as instances of express white supremacist racism.¹⁷⁸ Also, as a

177. Olivas, *supra* note 6, at 856–57.

178. Here are two anecdotes. First, on Easter Sunday, April 3, 1994, a police officer detained and questioned me while I was sitting in a downtown Sacramento park beside a public artwork that had been defaced with a graffito. Suspicious of me for this vandalism, the officer interrogated me, patted me down, looked nearby for evidence of any tool that I might have used, and asked for my driver's license. Innocent, I complied without protest but with growing frustration until the officer said that the graffito was "Mexican graffiti" and took my photograph with a Polaroid camera, at which time I expressed my indignation. Posing flippantly for the camera, I asked him, "Is anything that you are doing legal?" In response the officer shoved my license back into my hand and ordered me to leave the park, which I immediately did. (For a description of a similar police practice of photo-graphing Chicana/o youth elsewhere in California at around the same time, here under the express pretense that they were gang members, see Cruz Reynoso, *Cultural Diversity: Reality and Ideal*, 6 LA RAZA L.J. 209, 210 (1993).)

Four years earlier, I had begun to confront members of the several neo-Nazi skinhead youth gangs that populated Sacramento and its environs. See generally SKINHEADS IN AMERICA: RACISTS ON THE RAMPAGE, SOUTHERN POVERTY LAW CENTER INTELLIGENCE REPORT SPECIAL EDITION 18, 26 (n.d.), http://www.splcenter.org/sites/default/files/downloads/publication/Skinheads_in_America_0.pdf (discussing the neo-Nazi "American Front" skinheads). In the Sacramento of my youth, skinheads accosted me in high school, on the street, and in several other locales. While I personally

lawyer at the nonprofit Alameda County Homeless Action Center in Oakland, California, from November 2006 until December 2010, I represented impoverished individuals who sought Social Security disability benefits.¹⁷⁹ During those four years, working in a job perhaps similar to the one that Acosta fled prior to representing the Chicano Movement cases discussed above,¹⁸⁰ I encountered conduct from judges that I interpreted as, biased, perhaps unconsciously, on the bases of race, gender, and class.¹⁸¹ Even though I practiced law

avoided physical violence, others were not so fortunate. See Tim Grieve, *Over the Edge*, SACRAMENTO BEE (Sept. 2, 1990), at F1 (reporting on the Aug. 21, 1990 fight between rival skinhead gangs in Sacramento, which resulted in the murder of Paul Carallo, a young man affiliated with the Skinheads Against Racial Prejudice). As one response to this violence, I joined a nascent community group, Anti-Racist Action, organized against white supremacy at my high school, and participated in a Nov. 17, 1990, march and rally against white supremacy at the state capitol. See Maria E. Camposeco, *150 Protest Over Racist Skinheads*, SACRAMENTO BEE (Nov. 18, 1990), at B3. See generally *A History of Anti-Racist Action*, ANTI-RACIST ACTION, http://antiracistaction.org/?page_id=30 (last visited July 13, 2015).

179. See González, *supra* note 7, at 1026–27 (noting the author’s work at the Alameda County Homeless Action Center). See also *supra* note 7 (discussing the author’s experience as an activist, attorney, and educator based in Oakland, California). See generally Alameda County Homeless Action Center, <http://homelessactioncenter.org> (last visited July 7, 2015).

180. See HANEY LÓPEZ, *supra* note 23, at 30 (noting Acosta’s “brief stint as a legal aid attorney”); Olivas, *supra* note 6, at 848 (quoting “Acosta’s description of his first legal job, in Oakland, California Legal Services”).

181. For example, one day in court, I represented two women in separate hearings before the same Social Security Administration administrative law judge. In the morning, my client was an African-American woman with neither any drug-related conviction, nor any other evidence conflicting with her testimony as to when she had stopped her prior admitted substance abuse. The judge denied her claim for disability benefits primarily on the basis that he found her testimony not credible. In the afternoon, my client was a racially White woman whose conviction for driving under the influence of alcohol conflicted with her testimony as to the duration of her sobriety. The judge approved her claim, finding her substance abuse immaterial to her disability claim. While I felt frustrated during the first hearing, suspecting that the judge might be subjecting my client to invidious stereotypes about African-American women and crack, a student intern (who was a racially White woman and had accompanied me to both hearings), interpreted the cases starkly in terms of race. As I recall, she explained how similar my clients appeared to each other in terms of their flat affect and medical histories. From her point of view, the different treatment seemed explicable only by

with the myriad benefits of an education in law that featured critical race theory, LatCrit theory, and other genres of critical outsider jurisprudence,¹⁸² as a Chicana/o who was active in the local bar,¹⁸³ and while living in the same community as the office where I worked, I often felt perplexed at how to object effectively to seemingly invidious discrimination against my clients—in terms that would not unduly antagonize the judge.¹⁸⁴ Worried about not prejudicing my client's interests by objecting insolently to conduct that I believed evidenced invidious animus, implicit bias, unconscious racism, or common sense racism,¹⁸⁵ I instead chose to build and preserve the record in

race: indeed, the second client's racial Whiteness apparently functioned to trump evidence of record that contradicted her testimony, whereas the first client's racial Blackness apparently rendered her testimony not credible.

182. See *supra* note 44 (noting the author's education in critical outsider jurisprudence and comparative ethnic studies). Indeed, I studied *Racism on Trial* in my second semester at Berkeley Law with Haney López and after already having gained a passing knowledge of Oscar Zeta Acosta from my graduate education at San Francisco State University. Approximately four and a half years later I began teaching undergraduate students at San Francisco State University and U.C. Berkeley in courses that I redesigned, which syllabi included *Racism on Trial*. See González, *supra* note 7, at 1025–29 (discussing the author's experience of teaching undergraduate Ethnic Studies courses).

183. See *supra* note 41 (noting the author's service to local bar associations).

184. See *supra* note 181 (discussing an anecdote of judicial conduct that the author perceived as evidencing invidious discrimination).

185. For a recent analysis of invidious animus, see Susannah W. Pollvogt, *Unconstitutional Animus*, 81 *FORDHAM L. REV.* 887 (2013). The literature on implicit bias and unconscious racism has become voluminous. For two classic texts on the subject, see Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 *STAN. L. REV.* 1161 (1995) and Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *STAN. L. REV.* 317 (1987). For several recent articulations, see Debra Lyn Bassett, *Deconstruct and Superstruct: Examining Bias Across the Legal System*, 46 *U.C. DAVIS L. REV.* 1563 (2013); Andrew W. Briebresco, *Latino/a Plaintiffs and the Intersection of Stereotypes, Unconscious Bias, Race-Neutral Policies, and Personal Injury*, 13 *J. GENDER RACE & JUST.* 373 (2010); Jerry Kang, *Trojan Horses of Race*, 118 *HARV. L. REV.* 1489 (2005); Antony Page, *Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 *B.U. L. REV.* 155 (2005). For the theory of race and racism as common sense, see HANEY LÓPEZ, *supra* note 23, at 110–30. For a precursor theory, see Haney López, *supra* note 153, especially pages 1774–76.

order to prevail on appeal—a strategy that almost always ultimately worked—but at an immeasurable human cost to my impoverished clients, who were compelled to wait for a seemingly interminable period before receiving their disability benefits.

Thus, I feel impressed by Acosta's style of confronting the risk of truncated representation by objecting audaciously and brazenly to the invidious discrimination under which his clients had been indicted. While I have been willing to contest racist acts to which I, or a friend, was directly subject, as a lawyer I have been careful to safeguard my clients' individual cases before the judge. In contrast, Acosta directly contested the white supremacist legal violence arrayed against his clients, worrying less about their individual interests and more about how their cases implicated the broader Chicano Movement.¹⁸⁶ Although controversial, this choice was likely ethical, for Acosta's clients knew, or quickly came to learn, who they were getting when they agreed for him to represent them. As politically prepared Chicano Movement activists, most of them were willing to subject themselves to representation by a "revolutionary" lawyer who not only understood their experiences of racism in Los Angeles but dedicated himself to translating their experiences of racism into evidence of unconstitutional discrimination in the grand jury selection process.¹⁸⁷

186. See *supra* note 151 and accompanying text (discussing Acosta's understanding of how to use criminal defense work as an organizing tool for the Chicano movement). Accord HANEY LÓPEZ, *supra* note 23, at 29–30, 40 (discussing Acosta's dedication to the Chicano Movement); Olivas, *supra* note 6, at 854 (concluding that Acosta's challenge to the grand jury selection process combined "acute political instincts and deft lawyering [that] did not compromise his clients' interests, and largely vindicated them").

187. Compare GARCÍA & CASTRO, *supra* note 23, at 204, 213 ("Right from there I [Sal Castro] didn't have too much confidence in Oscar [Acosta]. He was erratic, and I found out later he was a druggie. I was glad that I also had the ACLU lawyers working on my case and those of the others arrested . . . I told Acosta that I could afford another lawyer so he would be free to help the others. He was too unstable and crazy."), with HANEY LÓPEZ, *supra* note 23, at 40 ("Acosta and the defendants conceived of these cases as vehicles to promote the Chicano movement, and they attempted to use the courts as a stage upon which to unmask judicial bias against Mexicans."), and Olivas, *supra* note 6, at 854 n.13 ("[East L.A. Thirteen defendant Carlos

Perhaps this fact, clients who are politically prepared, who perhaps even expect, to receive punishment for their social activism,¹⁸⁸ most limits the possibilities for Acosta's style of revolutionary lawyering today. This is not to say that such clients do not exist. One need only consider the young people who began coming out as "Undocumented and Unafraid" since 2010,¹⁸⁹ the "Occupy Wall Street" protests that erupted in 2011,¹⁹⁰ and the "Black Lives Matter"

Muñoz] chose not to hire Acosta as his lawyer, as he believed Acosta wanted to plead him guilty and 'make martyrs out of all of us.' While his esteem for Acosta grew over the two trials, [Muñoz] felt Acosta was a publicity hound and careless lawyer."). See also HANEY LÓPEZ, *supra* note 23, at 233 ("[After the *Biltmore Six* acquittals] Acosta was fed up with being a movement lawyer. On several occasions he ran into conflict with his clients, with both sides wondering about the other's true commitment. And he had also tired of practicing a profession that he hated.") (citation omitted).

188. *Accord* HANEY LÓPEZ, *supra* note 23, at 164–77 (theorizing the emerging common sense of protest, legal repression, and race in the Chicano Movement and how it led activists to expect legal violence).

189. See, e.g., UNDOCUMENTED AND UNAFRAID: TAM TRAN, CINTHYA FELIX, AND THE IMMIGRANT YOUTH MOVEMENT (Kent Wong et al. eds., 2012); DREAMS DEPORTED: IMMIGRANT YOUTH AND FAMILIES RESIST DEPORTATION (Kent Wong & Nancy Guardernos eds., 2015); Raquel Aldana, Beth Lyon & Karla Mari McKanders, *Raising the Bar: Law Schools and Legal Institutions Leading to Educate Undocumented Students*, 44 ARIZ. ST. L.J. 5 (2012); Laura Corruner, "Coming Out of the Shadows": *Dream Act Activism in the Context of Global Anti-Deportation Activism*, 19 IND. J. GLOBAL LEGAL STUD. 143 (2012); René Galindo, *Undocumented & Unafraid: The DREAM Act 5 and the Public Disclosure of Undocumented Status as a Political Act*, 44 URB. REV. 589 (2012); Jayesh M. Rathod, *Protecting Immigrant Workers Through Interagency Cooperation*, 53 ARIZ. L. REV. 1157, 1164 (2011); Natasha Rivera-Silber, "Coming Out Undocumented" in the Age of Perry, 37 N.Y.U. REV. L. & SOC. CHANGE 71 (2013); Rose Cuison Villazor, *The Undocumented Closet*, 92 N.C. L. REV. 1 (2013).

190. See, e.g., Tabatha Abu El-Haj, *All Assemble: Order and Disorder in Law, Politics, and Culture*, 16 U. PA. J. CONST. L. 949 (2014); David Dana & Nadav Shoked, *Public, by Necessity*, 13 SEATTLE J. FOR SOC. JUST. 341 (2014); Trina Jones, *Occupying America: Dr. Martin Luther King, Jr., the American Dream, and the Challenge of Socio-Economic Inequality*, 57 VILL. L. REV. 339 (2012); Sarah Kunstler, *The Right to Occupy: Occupy Wall Street and the First Amendment*, 39 FORDHAM URB. L.J. 989 (2012); Robin Lipp, Note, *Protest Policing in New York City: Balancing Safety and Expression*, 9 HARV. L. & POL'Y REV. 275 (2015); Janos D. Marton, *Representing an Idea: How Occupy Wall Street's Attorneys Overcame the Challenges of Representing Non-Hierarchical Movements*, 39 FORDHAM URB. L.J. 1107 (2012); Udi Ofer, *Occupy the Parks: Restoring the Right to Overnight Protest in Public Parks*, 39 FORDHAM URB. L.J. 1155 (2012); Stephen Tower, Comment, *Not in My Front Yard: Freedom of Speech and State Action in New York City's*

movement that emerged in 2012 after George Zimmerman killed Trayvon Martin.¹⁹¹ Similarly, thinking about the lawyers who represent Wikileaks Editor-in-Chief Julian Assange¹⁹² and national security whistleblower Edward Snowden¹⁹³ reinforces the understanding that a substantial number of people are willing to break the law on principle in order to effect social change. At the same time, however, after decades of *kulturkampf* (culture war) and other forms of *revanchism* (right-wing revenge-taking),¹⁹⁴ the number of

Privately Owned Public Spaces, 22 J.L. & POL'Y 433 (2013); Christine Verbitsky, Note, *The Occupy Wall Street Movement and the Constitution: Protesters Preoccupied with the First Amendment*, 29 TOURO L. REV. 1003 (2013); Timothy Zick, Book Review, *Liberty's Refuge: The Forgotten Freedom of Assembly* by John D. Inazu, 91 TEX. L. REV. 375 (2012).

191. See *About Us*, BLACK LIVES MATTER, <http://blacklivesmatter.com/about> (last visited Oct. 17, 2015) (“#BlackLivesMatter was created in 2012 after Trayvon Martin’s murderer, George Zimmerman, was acquitted for his crime, and dead 17-year old Trayvon was post-humously [sic] placed on trial for his own murder.”). See also Mario L. Barnes, *Taking A Stand?: An Initial Assessment of the Social and Racial Effects of Recent Innovations in Self-Defense Laws*, 83 FORDHAM L. REV. 3179 (2015); Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191, 192 (2015); Laverne Lewis Gaskins, *Justice Demands That Black Lives Matter*, NBA NAT’L B. ASS’N MAG. 26 (Dec. 2014); Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward A Vision for Racial Justice in the United States After Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 121 (2015); Kenneth Lawson, *Police Shootings of Black Men and Implicit Racial Bias: Can’t We All Just Get Along*, 37 U. HAW. L. REV. 339 (2015); L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961 (2015); Arnetta Rogers, Note, *How Police Brutality Harms Mothers: Linking Police Violence to the Reproductive Justice Movement*, 12 HASTINGS RACE & POVERTY L.J. 205 (2015).

192. See JUSTICE FOR ASSANGE, <https://justice4assange.com> (last visited Oct. 17, 2015). See generally WIKILEAKS, <https://wikileaks.org/index.en.html> (last visited Oct. 17, 2015).

193. See Russell Brandom, *Edward Snowden’s Lawyer will Keep your Secrets*, THE VERGE (June 24, 2014), <http://www.theverge.com/2014/6/24/5818594/edward-snowdens-lawyer-jesselyn-radack-will-keep-your-secrets>; Charlie Savage & Matt Apuzzo, *Snowden Retained Expert in Espionage Act Defense*, N.Y. TIMES (Apr. 28, 2014), <http://www.nytimes.com/2014/04/29/us/snowden-retained-expert-in-espionage-act-defense.html>.

194. On *revanchism* in the United States, see NEIL SMITH, *THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY* 44–47 (1996); Marc-Tizoc González, *Hunger, Poverty, and the Criminalization of Food Sharing in the New Gilded Age*, 23 AM. U. J. GENDER & SOC. POL’Y & L. 231, 235–36, 257–59, 279–80 (2015). On *kulturkampf*, see, e.g., Francisco Valdes, “We Are Now of the View”: *Backlash Activism*,

people who are willing to break the law on principle in the United States may be a relatively small proportion of the populace. Also, what Olivas feared in 1991 continues to constrain the possibilities for Acosta's style of revolutionary lawyering today. As Olivas noted then:

I have a nagging fear that much of the monkey wrenching, in law and curriculum, will be done by those who do not share my politics. And they rule the world, not I. The expanded use of sanctions, such as those directed at two of my heroes, William Kunstler and Julius Chambers, makes me believe that the interests of neither Linda Brown nor the Chicago Seven could be vigorously defended in today's climate. Derrick Bell can be monkey wrenched in a law class. Jerry Falwell can sue *Hustler*, all the way to the Supreme Court, but Andrea Dworkin is threatened with sanctions if she argues that *Hustler* literally harms women.¹⁹⁵

Notwithstanding today's obvious crackdowns and more subtle constraints on dissent, however, it is well worth remembering Oscar "Zeta" Acosta and his strident defense of Chicano Movement activists in Los Angeles. Indeed, I look forward to cultivating broader knowledge and critical discourse over what Acosta, and his contemporary and predecessor Chicana/o, Mexican American, and other Latina/o lawyers attempted and accomplished in the twentieth century.¹⁹⁶ As I explain below, contextualizing lawyers' work within

Cultural Cleansing, and the Kulturkampf to Resurrect the Old Deal, 35 SETON HALL L. REV. 1407 (2005).

195. Olivas, *supra* note 6, at 855 (citations omitted).

196. See, e.g., "COLORED MEN" AND "HOMBRES AQUÍ", *supra* note 2 (discussing the rise of Mexican American lawyering through an examination of the four Mexican American lawyers, Carlos Cadena, James de Anda, Gus Garcia, and Johnny Herrera, who established constitutional equal protection for Mexican Americans); IN DEFENSE OF MY PEOPLE: ALONSO S. PERALES AND THE DEVELOPMENT OF MEXICAN-AMERICAN PUBLIC INTELLECTUALS (Michael A. Olivas ed., 2013) (discussing the life and times of Alonso S. Perales (1898-1960), the third Mexican American attorney in the state of Texas); Michael Bennett & Cruz Reynoso, *California Rural Legal Assistance (CRLA): Survival of a Poverty Law Practice*, 1 CHICANO L. REV. 1 *passim* (1972) (discussing the origins and initial

la gran lucha, can help them—rather, us—create socio-legal conditions under which more people may suffer less injustice under the color of law.

II. *La gran lucha*

Engaging with Olivas's essay on lawyers' dilemmas, unpopular causes, and legal regimes has deepened my appreciation for the three risks of representation that Martha Minow identified—nonrepresentation, terminated representation, and truncated representation. Contemplating Olivas's three case studies and applying their insights to recent and ongoing controversies, I find that his scholarship offers critical insights into the socio-legal conditions that tend to keep legal representation out of reach for certain populations. Furthermore, his work evinces a breath of "critical hope"¹⁹⁷ as to how lawyers might organize themselves to stop, or at least slow down a law breaking regime, and an absurd memory of the Chicano Movement that nonetheless proves instructive for the kinds of identities and relationships that might empower lawyers whose clients contemplate breaking the law on principle in order to transform their socio-legal situation.

Much more could be written, and I hope that my contribution will encourage other scholars in future years to apply Olivas's insights to, *inter alia*, the emerging youth movements of today, such as #BlackLivesMatter and the Dreamers, those who are "Undocumented

struggles of California Rural Legal Assistance); Michael A. Olivas, *From a "Legal Organization of Militants" into a "Law Firm for the Latino Community": MALDEF and the Purposive Cases of Keyes, Rodriguez, and Plyler*, 90 DENV. U. L. REV. 1151 (2013) (discussing the origins and organizational evolution of the Mexican American Legal Defense and Education Fund); Tom I. Romero, II, *MALDEF and the Legal Investment in a Multi-Colored America*, 18 BERKELEY LA RAZA L.J. 135, 136 n.10 (2007) (discussing the origins of MALDEF and describing its 1967 founding as the Mexican American Legal Defense (MALD) by San Antonio, Texas attorney Peter Tijerina).

197. See PAOLO FREIRE, *PEDAGOGY OF HOPE: RELIVING PEDAGOGY OF THE OPPRESSED* 2 (Robert R. Barr trans., Continuum Publ'g Co. 2004) (discussing the need for critical hope, "based on the need for truth as an ethical quality of the struggle").

and Unafraid.”¹⁹⁸ Instead of delving into current social movements, however, I end this Article by discussing my conceptualization of *la gran lucha*, and how I perceive myself in relationship to Olivas, Acosta, and actual lineages and fictive genealogies of attorneys of Mexican heritage who attempt to use the law to transform socio-legal conditions so that more people may suffer less, and so that the power elite may be brought down to a point where their authority comes beneath the rule of law.¹⁹⁹

A. Lineages of Struggle

As noted at the start of this Article, by *la gran lucha*, I mean “the understanding that our pasts are not merely multicolored: rather, our diverse heritages wind through centuries of socio-legal struggle, which transcend the current nation state.”²⁰⁰ This concept derives from my experiences as a Chicana/o who was born and raised amidst the contradictions of the final quarter of the twentieth century, experienced predominantly in my hometown of Sacramento, California (1975-1996), with a sojourn in the Inland Empire of Southern California (1996-1998), and a dozen years in the San Francisco Bay Area (1998-2010), where I lived longest in Oakland, California (2002-2010). From 2002 to 2005, I trained to become a lawyer at Berkeley Law, during the start of the War on Terror(ism) and the years when the Supreme Court of the United States barely upheld the constitutionality of racially conscious affirmative action in higher education.²⁰¹ Through my formal education in law and concurrent “insurgent” student activism,²⁰² I transfigured my then-recent graduate education in interdisciplinary social science, visual anthropology, and comparative ethnic studies into what has become a decade-plus engagement with one of the

198. See sources cited, *supra* notes 189 & 191.

199. On the notion of authority under law, see LINEBAUGH, *supra* note 109, at 17, 211-12.

200. See sources cited and discussed *supra* note 8.

201. See Anderson et al., *supra* note 8, at 1892-1905; González, *supra* note 7, at 1026.

202. On insurgent student activism, see Anderson et al., *supra* note 8, at 1892-1905.

academic movements sparked by the previous decades' organization of critical legal studies, feminist critical legal theory, critical race theory, and other genres of critical outsider jurisprudence—LatCrit theory, praxis, and community.²⁰³

As a Chicana/o law student enrolled amidst a critical mass of other students *de colores* (of colors) who had inherited a set of student organizations that reached back to the Power-Identity movements of the 1960s, I benefited immeasurably from engaging with my peers in various actions and campaigns, endeavoring to reform our law school and to intervene in the broader social struggles of our times by playing our position as student activists at one of California's elite law schools.²⁰⁴ While working alongside my peers, I oriented my education in law to study under critical race theorists who were affiliated with LatCrit theory, praxis, and community, like Angela P. Harris and Ian F. Haney López, and I engaged in the production of

203. For my contributions to the published LatCrit symposia, in reverse chronological order, see Marc-Tizoc González, *Habeas Data: Comparative Constitutional Interventions from Latin American against Neoliberal States of Insecurity and Surveillance*, 90 CHI. KENT L. REV. 641 (2015) (Afterword for LatCrit symposium "Toward Equal Justice in Law, Education and Society"); César Cuauhtémoc García Hernández & Marc-Tizoc González, *Fifteen Years of Reconstructing the World*, 14 HARV. LATINO L. REV. 243 (2011) (Foreword for LatCrit XV symposium); Marc-Tizoc González & Christopher J. Curran, *Food Justice as Interracial Justice*, 43 U. MIAMI INTER-AM. L. REV. 207 (2011) (Article for LatCrit symposium for the South-North Exchange on Theory, Culture, and Law on "The Global Politics of Food"); Marc-Tizoc González, Yanira Reyes, Belkys Torres & Charles Venator Santiago, *Afterword: The LatCrit Task Force Recommendations: Findings and Recommendations of a Self-Study of the LatCrit Board*, 2009, 18 AM. U. J. GENDER & SOC. POL'Y & L. 853 (2010) (Afterword for LatCrit XIV symposium); Marc-Tizoc González, *Latinalo (Public/Legal) Intellectuals, Social Crises and Contemporary Social Movements*, 18 AM. U. J. GENDER & SOC. POL'Y & L. 787 (2010) (Essay for LatCrit XIV symposium) [hereinafter González, *Latinalo (Public/Legal) Intellectuals*]; Marc-Tizoc González, Yanira Reyes-Gil, Belkys Torres & Charles Venator Santiago, *Afterword: Change and Continuity: An Introduction to the LatCrit Evolution Taskforce Recommendations*, 8 SEATTLE J. FOR SOC. JUST. 303 (2009) (Afterword for LatCrit XIII symposium); Marc-Tizoc González, *Counter-Disciplinarity in the Critical Education Tradition in LatCrit Theory*, 8 SEATTLE J. FOR SOC. JUST. 107 (2009) (Cluster Introduction for LatCrit XIII symposium); Marc-Tizoc González, *Tracing the Critical Education Tradition in LatCrit Theory, Praxis & Community*, 4 FIU L. REV. 85 (2008) (Cluster Introduction LatCrit XII symposium).

204. See Anderson et al., *supra* note 8, at *passim*.

socio-legal knowledge at the *Berkeley La Raza Law Journal*.²⁰⁵ As a member and officer of La Raza Law Students Association and the Coalition for Diversity, I learned that some of my peers and I shared actual kinship regarding past, and ongoing, struggles for social justice.²⁰⁶ I also had the opportunity to read Ian F. Haney López's *Racism on Trial: The Chicano Fight for Justice*,²⁰⁷ which analyzed historical events that were vital to my familial history.

For example, my mother, Petra M. Valadez (born in 1944 in Sanderson, Texas), was a Chicana schoolteacher in Los Angeles County in 1968.²⁰⁸ Her parents, Ramón V. Valadez (May 11, 1898 – October 6, 1976) and María M. Valadez (August 6, 1911 – July 5, 1996), immigrated to Sanderson, Texas in 1929 from Allende, Coahuila, México. *La familia* (the family) Valadez migrated to Salinas, California in December 1946, where they worked in the fields and packing sheds of the Salinas Valley until the late 1960s.²⁰⁹ Petra M. Valadez graduated from Gonzales High School in 1961, and she earned her B.A. in 1965 and her California teaching credential in 1966 from California State University, Hayward (now CSU East Bay).²¹⁰ As a schoolteacher, she became active in the Chicano Movement in Los Angeles until she was arrested during the April 24, 1969, protest of Governor Ronald Reagan's speech recounted by Haney López as leading up to the case of the *Biltmore Six*.²¹¹

While Haney López focused on Oscar "Zeta" Acosta's defense against the criminal prosecution of the alleged arson and conspiracy to commit arson in several of the upper floors in the Biltmore Hotel,²¹² as my mother relates it, a group of Chicana/o Movement activists stood up just as Governor Reagan started his speech and began to clap loudly in order to disrupt it. Immediately after they stood, however,

205. See Anderson et al., *supra* note 8, at 1896–98.

206. See, e.g., *id.* at 1898–1903; González, *Latina/o (Public/Legal) Intellectuals*, *supra* note 203, at 792–93.

207. HANEY LÓPEZ, *supra* note 23.

208. See González, *supra* note 7, at 991, 1032 n.119.

209. *Id.*

210. *Id.* at 1032 n.119.

211. See Montez, 88 Cal. Rptr. 736; HANEY LÓPEZ, *supra* note 23, at 35.

212. See, e.g., HANEY LÓPEZ, *supra* note 23, at 36–40.

police officers rushed to arrest them.²¹³ Though charges against her were eventually dropped because, as she explains, the police photograph barely failed to include her, her arrest nevertheless resulted in the temporary suspension of her teaching credential.²¹⁴ Unable to work as an educator, she left Los Angeles for Sacramento to live with a sister, and in 1969, she enrolled in the Mexican American Education Project at Sacramento State College (later California State University, Sacramento).²¹⁵ During her studies in Sacramento, she met my father.

Alfonso Z. González (August 2, 1931 – May 1, 2006) was born in Sacramento to José Z. González (April 16, 1903 – August 27, 1967) and Josephine Z. González (August 27, 1904 – March 20, 1990).²¹⁶ His parents met in Pocatello, Idaho, after emigrating separately from different parts of México, José from Aguas Caliente, Aguas Caliente and Josephine from Gómez Palacio, Durango. They married on March 15, 1925. Shortly thereafter, their oldest son, Florentino,

213. *Accord* HANEY LÓPEZ, *supra* note 23, at 35.

214. *Cf.* GARCÍA & CASTRO, *supra* note 23, at 207–08, 213–20 (discussing Sal Castro’s experience of being barred from teaching at Lincoln High School, allegedly under a state education code prohibiting an indicted felon from teaching; his temporary reassignment to a non-teaching job; and the community protest of his reassignment, including a weeklong sit-in at the school district office where the Los Angeles Board of Education met, which ultimately persuaded the board to reinstate him). Although reinstated to teach in the 1968–69 academic year, Castro experienced reprisals from various school officials for the next five years. *See id.* at 221–34, 244–46, 248.

215. *See Mexican American Education Project*, INSTITUTE FOR DEMOCRACY AND EDUCATION, <https://sites.google.com/site/democracyandeducationorg/chicano-mexican-american-digital-history-project/mexican-american-education-project> (last visited Oct. 17, 2015). *See also* Petra Valadez, *A Rationale and a Teaching Unit for Changing the Social Studies and Educational Curricula to Institute Sensitized Representation of the Chicano Experience* (1972) (unpublished M.A. thesis, California State University, Sacramento) (on file with author).

216. *See* Robert D. Davila, *Attorney an Activist for Latino Justice*, SACRAMENTO BEE, May 4, 2006, at B1. The following account derives from published documents as noted below, my recollection of familial stories, my nascent genealogical research, and several texts that I wrote for college classes in 1996 and 1997 and for a 2003 speech that I delivered at the occasion of a Mexican American Educational Association scholarship being named after my then living father. (All unpublished documents on file with author).

contracted diphtheria. On the advice of a doctor, they migrated from Pocatello to Sacramento in 1927 so that he could benefit from the warmer climate. Accompanying José, Josephine, and their children (Florentino and Dora) were Josephine's mother, Luisa Zúñiga and little sister, Julia Z. Ornelas.²¹⁷ In Sacramento, they found seasonal work at the Libby, McNeil & Libby cannery, until José obtained a job as a welder with the railroad in 1937.²¹⁸

Raised in the neighborhood of Oak Park, Sacramento,²¹⁹ Alfonso Z. González was a member of what Chicana/o Studies scholars have named the Mexican American Generation.²²⁰ Like most of his siblings,

217. Interview with Rosemarie Sánchez, Sacramento, California (Aug. 1, 2015).

218. *Accord Davila*, *supra* note 216; *González*, *supra* note 7, at 1033. For a discussion of labor organizing at this cannery with emphasis on the role of Mexican American women, see VICKI L. RUIZ, CANNERY WOMEN, CANNERY LIVES: MEXICAN WOMEN, UNIONIZATION, AND THE CALIFORNIA FOOD PROCESSING INDUSTRY, 1930–1950, at 57, 103–10 (1987). My notes are discrepant regarding for which railroad José worked, with some stating the Southern Pacific and others the Union Pacific. Several of my cousins, however, believe that it was the Southern Pacific. In 1996 the two railroad companies merged. See *Southern Pacific Railroad*, UNION PACIFIC, https://www.up.com/aboutup/special_trains/heritage/southern_pacific/index.htm (last visited Oct. 17, 2015).

219. On the history of Oak Park, Sacramento, see generally SACRAMENTO'S OAK PARK (Lee M.A. Simpson ed., 2004). For an early account of a Mexican immigrant's acculturation to life in Sacramento, see ERNESTO GALARZA, *BARRIO BOY* 189–266 (1971). For other accounts of growing up in early to mid-twentieth century Mexican American families in and around Sacramento, see RICHARD RODRIGUEZ, *HUNGER OF MEMORY: THE EDUCATION OF RICHARD RODRIGUEZ* (1982); RICHARD RODRIGUEZ, *DAYS OF OBLIGATION: AN ARGUMENT WITH MY MEXICAN FATHER* (1992); RICHARD RODRIGUEZ, *BROWN: THE LAST DISCOVERY OF AMERICA* (2002); Michael Nava, *Gardenland, Sacramento, California*, in *HOMETOWNS: GAY MEN WRITE ABOUT WHERE THEY BELONG* 21 (John Preston ed., 1991).

220. For influential explanations of the formation of the "Mexican-American Generation" under a theory of successive "political generations" of people of Mexican heritage in the United States, see MARIO T. GARCÍA, *MEXICAN AMERICANS: LEADERSHIP, IDEOLOGY AND IDENTITY, 1930–60*, at 1–7, 13–22 (1990); GEORGE J. SÁNCHEZ, *BECOMING MEXICAN AMERICAN: ETHNICITY, CULTURE AND IDENTITY IN CHICANO LOS ANGELES, 1900–1945*, at 11–13 (1993) (arguing that a new Mexican American ethnic identity emerged in the 1930s through processes of cultural adaptation without substantial economic mobility). See also DAVID GUTIÉRREZ, *WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS, AND THE POLITICS OF ETHNICITY* 69–116 (1995) (discussing Mexican American ethnic politics prior to 1940); HANEY LÓPEZ, *supra* note

he attended C.K. McClatchy High School, where he befriended one of the daughters of California governor Earl Warren, who would direct her chauffeur to pick up her friends and drive them to school in her limousine.²²¹ As he described it, Sacramento's small Mexican American community of that time centered around community dances and other cultural events organized by the Mexican consulate office and other local organizations.²²² Encouraged to consider attending college through conversations with the governor's daughter and her friends, who often discussed where they planned to enroll, when asked, González answered that he would attend the University of California, Berkeley (U.C. Berkeley). After graduating from high school in 1949,²²³ he enrolled at Sacramento City College, where he earned his A.A. in 1951.²²⁴ The following year, he

23, at 70–84 (discussing the Mexican American generation with a focus on its evolving racial identity); F. ARTURO ROSALES, *CHICANO!: THE HISTORY OF THE MEXICAN AMERICAN CIVIL RIGHTS MOVEMENT* 90–127 (1996) (discussing the Mexican American generation through civil rights organizations and labor struggles).

221. Although I have yet to verify the name of the governor's daughter, Earl Warren was governor during 1943 to 1953, which includes the period when Alfonso Z. González was in high school. *Earl Warren*, THE GOVERNOR'S GALLERY, CALIFORNIA STATE LIBRARY, <http://governors.library.ca.gov/30-Warren.html> (last visited Oct. 17, 2015). Warren had three daughters, Virginia, Dorothy, and Nina Elizabeth, who were born in 1929, 1931, and 1934 respectively. See Patricia Sullivan, *Socialite Virginia Warren Daly, 80, Dies*, WASH. POST (Mar. 4, 2009), <http://www.washingtonpost.com/wpdyn/content/article/2009/03/03/AR2009030303561.html>; Alden Whitman, *Earl Warren, 83, Who Led High Court In Time of Vast Social Change, Is Dead*, N.Y. TIMES (July 10, 1974), <http://www.nytimes.com/learning/general/onthisday/bday/0319.html>; *The Warren Children*, LIFE 42–44 (July 26, 1948); From the *Washington Post*, *Daughter of Chief Justice Warren Dies*, L.A. TIMES (Nov. 26, 1986), http://articles.latimes.com/1986-11-29/news/mn-16243_1_chief-justice-warren.

222. Cf. Kelly Johnson, *Sacramento Mexican Consulate Relocates to Natomas*, SACRAMENTO BUSINESS J. (Feb. 4, 2011), <http://www.bizjournals.com/sacramento/news/2011/02/04/sacramento-mexican-consulate-moves.html> (noting the consulate office's then-68-year history in Sacramento). On the role of consulate offices in Mexican American history, see generally GILBERT G. GONZÁLEZ, *MEXICAN CONSULS AND LABOR ORGANIZING: IMPERIAL POLITICS IN THE AMERICAN SOUTHWEST* (1999).

223. THE MEXICAN AMERICAN DIRECTORY 81–82 (Arturo Palacios ed., 1969); Davila, *supra* note 216.

224. FELICIANO RIVERA, *A MEXICAN AMERICAN SOURCE BOOK WITH STUDY GUIDELINE* 126 (1970).

matriculated to U.C. Berkeley.²²⁵ His studies were interrupted, however, when the United States Army drafted him into the Korean War.²²⁶ González served in military intelligence and was assigned to a base in Germany,²²⁷ from which he traveled widely in Europe while on leave. A few years later, he obtained an early honorable discharge in order to resume his studies, which he completed in 1956, earning a B.A. in the Regional Group Major on Hispanic America.²²⁸ He then worked for a year as a social worker for the Sacramento County Welfare Department in an in-home health care program for the elderly before enrolling in law school in the fall of 1957.²²⁹ As he told it, part of his motivation to become a lawyer came from his grandmother, *Doña* Luisa, who told him that she aspired for him to become a doctor or a lawyer.²³⁰ At the same time, she instilled in him her *dicho* (proverb) to feel proud of being Mexican *en su carne y hueso* (in his flesh and bones).

Although González related that several Mexican students were enrolled at Boalt Hall (U.C. Berkeley's law school) with him, he recalled being one of only three *Mexican American* law students

225. See INTERNATIONAL HOUSE BERKELEY ALUMNI DIRECTORY 1993, at 27 (dating the start of González's residence at the U.C. Berkeley International House as 1952).

226. In order to obtain a grave marker from the government, the author confirmed González's military service shortly after his death. González was discharged honorably with the rank of corporal as a veteran of the Korean War.

227. My notes on the location of the base where González was stationed are contradictory. Earlier notes indicate the base was at Stuttgart, Germany. Later notes state that the base was in Giessen, Germany. According to the United States Department of Veterans Affairs, González's detailed military record was destroyed in the July 12, 1973 fire at the National Personnel Records Center in Overland, Missouri. See generally Walter W. Stender & Evans Walks, *The National Personnel Records Center Fire: A Study in Disaster*, 37 AMER. ARCHIVIST 521 (1974), https://www.archives.gov/st-louis/military-personnel/NPRC_fire_a_study_in_disaster.pdf.

228. THE MEXICAN AMERICAN DIRECTORY, *supra* note 223, at 81; RIVERA, *supra* note 224, at 126. The Regional Group Majors reflect an earlier organization of the university. See, e.g., UNIVERSITY OF CALIFORNIA—GENERAL CATALOGUE 79–80 (Sept. 21, 1942) (on file with author) (describing the Regional Group Majors and specifying the requirements for the Regional Group Major on Hispanic America).

229. See THE MEXICAN AMERICAN DIRECTORY, *supra* note 223, at 81; Davila, *supra* note 216.

230. See RIVERA, *supra* note 224, at 126; Davila, *supra* note 216.

enrolled during those years, which he believed to have been the largest concentration up until that time.²³¹ One of those students was a young man named Cruz Reynoso, who was a 3L (third-year law student) when Alfonso Z. González was a 1L (first-year law student). For many readers, Cruz Reynoso needs no introduction. Professor of Law Emeritus at the U.C. Davis School of Law and inaugural holder of the Boochever and Bird Chair for the Study and Teaching of Freedom and Equality, he was the first Mexican American to serve on the California Courts of Appeal (Third District, from 1976 to 1982) and the Supreme Court of California (from 1982 to 1986).²³² After the politicization of the California judicial reconfirmation process

231. *Accord* ANDREA GUERRERO, SILENCE AT BOALT HALL: THE DISMANTLING OF AFFIRMATIVE ACTION 2 (2002) (noting that only twenty students enrolled at Boalt Hall from 1911 to 1964 identified as Latino) (citation omitted). *See also* BOALT HALL PROFESSIONAL DIRECTORY (Sept. 8, 1992) (on file with author). This 33-page document lists Latina/o Boalt Hall alumni alphabetically by last name, along with their year of graduation, known job, and contact information. Including González, it features twelve Latino (all male) alumni who graduated before 1961: Augustus L. Castro, Class of 1936, Renzo A. Del Pero, Class of 1939, Alejandro F. DeSantos, Class of 1956, Alfonso Z. González, Class of 1960, Richard A. Ibañez, Class of 1936, G. Ernest López, Class of 1952, Raymond E. Mellana, Class of 1948, Cruz Reynoso, Class of 1958, Richard R. Rivera, Class of 1950, Albert J. Salera, Class of 1956, Edward E. Serres, Class of 1960, and Robert J. Soares, Class of 1958. *Id.* at 6, 9, 13, 15, 17, 19, 25, 26, 28, 29, 30.

232. *See* KENNETH C. BURT, THE SEARCH FOR A CIVIC VOICE: CALIFORNIA LATINO POLITICS 299–300 (2007); Cruz Reynoso, *Brief Remembrances: My Appointment and Service on the California Court of Appeal and Supreme Court, 1976–1987*, 13 BERKELEY LA RAZA L.J. 15, 15 (2002). *See also* CRUZ REYNOSO: SOWING THE SEEDS OF JUSTICE (Abby Ginzberg dir. 2010), <http://www.reynosofilm.com>; Bennett & Reynoso, *supra* note 196, at *passim*; Kristina Horton Flaherty, *Cruz Reynoso Honored as ‘Legal Giant,’* CAL. BAR J. (Oct. 2009), <http://archive.calbar.ca.gov/Archive.aspx?articleId=96466&categoryId=96412&month=10&year=2009>; Alan Houseman, *Interview with Cruz Reynoso*, NAT’L EQUAL JUST. LIBRARY, GEO. U. L. CTR. ORAL HIST. COLLECTION (Aug. 12, 2002) <http://www.law.georgetown.edu/library/collections/nejl/reynoso-transcript.cfm>; NPR Staff, *At Age 80, Trailblazer Keeps Fighting for Justice*, NPR (Sept. 28, 2011), <http://www.npr.org/2011/09/28/140876184/at-age-80-trailblazer-keeps-fighting-for-justice>; Keith Roberts, *An Inter-view with Justice Cruz Reynoso*, 51 THE JUDGE’S J. 4 (Summer 2012); Cruz Reynoso, U.C. DAVIS SCHOOL OF LAW, <https://law.ucdavis.edu/faculty/reynoso/> (last visited July 13, 2015). Reynoso’s papers have recently been archived. *Cruz Reynoso Papers D-401*, U.C. DAVIS SPECIAL COLLECTIONS, <http://www.oac.cdlib.org/findaid/ark:/13030/c8ns0x5r/admin/> (last visited July 20, 2015) (describing the collection and providing links to three inventories).

successfully targeted him for removal from that Court, along with Chief Justice Rose Bird and Associate Justice Joseph Grodin,²³³ Reynoso worked at the Sacramento office of the Los Angeles-based law firm of O'Donnell & Gordon,²³⁴ and then at Kaye, Scholer, Fierman, Hays & Handler.²³⁵ He then returned to academia, teaching at the UCLA School of Law from 1991 to 2001 and the U.C. Davis School of Law from 2001 to 2006, before transitioning into emeritus status.²³⁶ Throughout his career, he also served on numerous boards and commissions,²³⁷ including the United States Commission on Civil Rights from April 19, 1993 to December 7, 2004.²³⁸ Among Reynoso's myriad awards and honors, President Clinton awarded him the Medal of Freedom, the highest civilian honor of the United States, on

233. See BURT, *supra* note 232, at 310; Alma Cook, *State Election Returns: Final Compilations*, L.A. TIMES (Nov. 6, 1986), http://articles.latimes.com/1986-11-06/news/mn-16714_1_returns; Flaherty, *supra* note 232; Philip Hager, *Reynoso Uses Media Campaign in Effort to Retain Judgeship*, L.A. TIMES (Oct. 19, 1986), http://articles.latimes.com/1986-10-19/news/mn-6219_1_cruz-reynoso; Houseman, *supra* note 232, at paras. 64 & 66; NPR Staff, *supra* note 232; Reynoso, *supra* note 232, at 27. The history of his reconfirmation campaign, Friends of Reynoso, has yet to be told. *But see* CRUZ REYNOSO: SOWING THE SEEDS OF JUSTICE, *supra* note 232 (referencing the campaign).

234. Frank Clifford, *Defeated Justice Reynoso to Join L.A.-Based Law Firm*, L.A. TIMES (Jan. 3, 1987), http://articles.latimes.com/1987-01-03/local/me-2197_1_law-firm.

235. Philip Hager, *Justice Prevails: Cruz Reynoso Was Swept Off the State Supreme Court With Rose Bird, but Now He's Found New Causes and a New Career*, L.A. TIMES (Aug. 13, 1989), http://articles.latimes.com/1989-08-13/magazine/tm-885_1_supreme-court-justices.

236. See Flaherty, *supra* note 232; Houseman, *supra* note 232, at paras. 66 & 68; NPR Staff, *supra* note 233; Roberts, *supra* note 232, at 4.

237. See, e.g., Hager, *supra* note 233 (noting Reynoso's service on the board of directors for the Latino Issues Forum, the Mexican American Legal Defense and Educational Fund, and the Natural Resources Defense Council, and his membership on the California Post-Secondary Education Commission and a California Bar commission on legal aid).

238. U.S. GENERAL ACCOUNTABILITY OFF., U.S. COMMISSION ON CIVIL RIGHTS: AGENCY LACKS BASIC MANAGEMENT CONTROLS, GAO/HEHS-97-125, 37 (July 1997) (dating Reynoso's appointment to the Commission as Apr. 19, 1993 and the commissioners' concurrence to President Clinton's designation of Reynoso as Vice Chair on Nov. 19, 1993); Erica Werner, *Top Two Commissioners Resign From Civil Rights Panel*, WASH. POST (Dec. 8, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A45327-2004Dec7.html>.

August 9, 2000.²³⁹ In all, Reynoso is a famed Latino leader, civil rights lawyer, and prolific scholar.

My aim now is to contextualize Reynoso and González as two of the small number of Mexican American attorneys in postwar California. These earlier generational cohorts of attorneys can be imagined as constituting a fictive genealogy of Latina/o lawyers who confronted the risks of representation on behalf of clients who broke the law—sometimes on principle and other times merely by being in the United States. For example, Reynoso graduated from Boalt Hall in 1958, studied Mexican Constitutional Law in Mexico City on a Ford Foundation fellowship, joined the State Bar of California in May 1959, and began his law practice in El Centro, a small town in Imperial County, California.²⁴⁰ González graduated from Boalt Hall in 1960, joined the California Bar in June 1962, and became the first Mexican American attorney in private practice in Sacramento.²⁴¹ He regarded *Hurtado v. Superior Court*²⁴² as his most important case. *Hurtado* involved a claim of wrongful death, arising from a January 19, 1969

239. See BURT, *supra* note 232, at 318; Regina McConahay, *Law Professor Cruz Reynoso Receives Presidential Medal of Freedom*, UCLA NEWSROOM (Aug. 10, 2000), <http://newsroom.ucla.edu/releases/Law-Professor-Cruz-Reynoso-Receives-1677>.

240. See U.C. BERKELEY SCH. OF LAW BOALT HALL ALUMNI DIRECTORY 2010, at 134, 187 (2010) [hereinafter BOALT HALL ALUMNI DIRECTORY]; BOALT HALL PROFESSIONAL DIRECTORY, *supra* note 231, at 25; Houseman, *supra* note 232, at paras. 2 & 4; Reynoso, *supra* note 232, at 17; Cruz Reynoso, *Democracy and Diversity*, ERNESTO GALARZA COMMEMORATIVE LECTURE 10 (1987), http://web.stanford.edu/dept/csre/pdfs/Second_Annual_Lecture_1987.pdf; Roberts, *supra* note 230, at 4; Cruz Reynoso, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/29470> (last visited July 13, 2015).

241. See BOALT HALL ALUMNI DIRECTORY, *supra* note 240, at 188; BURT, *supra* note 232, at 217; Attorney Search – Alfonso Zuniga Gonzalez, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/33140> (on file with author); BOALT HALL PROFESSIONAL DIRECTORY, *supra* note 231, at 13; Davila, *supra* note 216. Burt calls him “Sacramento’s first Mexican-American attorney.” BURT, *supra* note 232, at 229. González, however, related that one Mexican American attorney preceded him in Sacramento although this man (whose name I have forgotten) worked for a government agency.

242. 11 Cal. 3d 574, 582, 522 P.2d 666, 671 (1974) (holding that the state should apply its own law in a tort claim filed in California by a resident of a foreign state or country, where the foreign jurisdiction has no interest in having its own law applied).

automobile accident, brought by the next of kin (widow and children) of a Mexican national, Antonio Hurtado, who was a resident and domiciliary of the state of Zacatecas and “was in California temporarily and only as a visitor.”²⁴³ At the trial court, the defendants argued unsuccessfully to apply Zacatecas law to limit their liability.²⁴⁴ The California Court of Appeal for the Third District, however, reversed, limiting the plaintiffs to “the maximum amount recoverable under Mexican law... 24,334 pesos or \$1,946.72 at the applicable exchange rate of 12.5 pesos to one dollar.”²⁴⁵ After carefully considering the matter, the Supreme Court of California held that the state should apply its own law because the foreign jurisdiction had no interest in having its own law applied.²⁴⁶ In essence, *Hurtado* stands for the proposition that a Mexican life is not worth less than the life of a California resident.

B. Fictive Genealogies

Neither Reynoso, nor González, however, were among the first California attorneys of Mexican heritage.²⁴⁷ Because my research into

243. *Hurtado*, 11 Cal. 3d at 578.

244. *Id.*

245. *Id.* at 579; see also *Hurtado v. Super. Ct. Cnty. of Sacramento*, 35 Cal. App. 3d 176, 110 Cal. Rptr. 591 (Ct. App. 1973). Online inflation calculators show that \$1,946.72 in 1969 equals \$12,621.59 in 2015. See *CPI Inflation Calculator*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/data/inflation_calculator.htm (last visited Nov. 2, 2015).

246. *Hurtado*, 11 Cal. 3d 574.

247. A contemporary Mexican American of similar national stature to Cruz Reynoso should be mentioned here. Mario G. Obledo (Apr. 9, 1932 – Aug. 18, 2010), the “Godfather of the Latino Movement,” earned his LL.B. from the St. Mary University School of Law in 1960 (and later his J.D.), and he joined the State Bar of Texas in April 1961. See Emma Brown, *Mario G. Obledo, 78, Latino Civil Rights Pioneer, Dies*, WASH. POST (Aug. 23, 2010); Kenneth C. Burt, *In Memoriam: Mario Obledo, Godfather of the Latino Movement, 1932–2010*, 23 HARV. J. HISPANIC POL’Y 107 (2010–2011); Charles E. Cantú, *Observations on the Evolution of Minorities in the Law: From Law School to Practice*, 4 SCHOLAR 185, 186 (2002); Douglas Martin, *Mario Obledo, Hispanic Civil Rights Leader, Dies at 78*, N.Y. TIMES (Aug. 20, 2010); Elaine Woo, *Mario Obledo Dies at 78; California Secretary of Health and Welfare, Latino Civil Rights Leader*, L.A. TIMES (Aug. 21, 2010). See generally Mario G. Obledo Papers, U.C. DAVIS SPECIAL COLLECTIONS, <http://www.oac.cdlib.org/findaid/ark:/13030/c8zw1nzz/admin/>. The

the histories of Mexican American lawyers in California is nascent, here, I only name and briefly describe a small set of predecessors to Reynoso and González. For example, legal historians believe that the first Mexican American lawyer to argue before the United States Supreme Court was Manuel Ruiz, Jr. (July 25, 1905 – 1986).²⁴⁸ Ruiz earned his LL.B. from the University of Southern California Law School (now, USC Gould School of Law) in 1930, as that school's first known Latino alumnus, joined the California Bar in June of that year, and has been dubbed the "California Dean of Mexican-American Lawyers."²⁴⁹ From 1935 to 1968, Ruiz was an attorney of record in forty-six reported judicial opinions in state and federal courts.²⁵⁰ In

many organizations that he helped create and lead include, *inter alia*, the Hispanic National Bar Association, La Raza Lawyers, Mexican American Legal Defense and Education Fund (MALDEF), National Coalition of Hispanic Organizations, and Southwest Voter Registration Education Project. He led MALDEF as it moved its headquarters from San Antonio, Texas to San Francisco, California in 1970, and taught at Harvard Law School as a fellow in 1974-75 until California Governor Jerry Brown appointed him in 1975 to be Secretary of the California Health and Welfare Agency. BURT, *supra* note 232, at 298; KENNETH BURT, *THE HISTORY OF MAPA AND CHICANO POLITICS IN CALIFORNIA* 22 (1982) [hereinafter BURT, *HISTORY OF MAPA*]; ROSALES, *supra* note 220, at 264. Obledo's biography merits serious scholarly attention, which is beyond the scope of this Article. Several later highlights in his career, however include that he ran unsuccessfully for California governor in 1982, served as president of the League of United Latin American Citizens and chair of the National Rainbow Coalition during the 1980s, and received the Presidential Medal of Freedom in 1998 from President Bill Clinton. David Reyes, *Seasoned Activist's Passions Burn Bright Again*, L.A. TIMES (Aug. 2, 1998), <http://articles.latimes.com/1998/aug/02/news/mn-9476>.

248. IN DEFENSE OF MY PEOPLE, *supra* note 196, at xii-xiii (discussing Ruiz, noting his years of birth and death, citing *Buck v. California*, 353 U.S. 99 (1952), and explaining the evidence that indicates Ruiz was the first Mexican American lawyer to argue before the Supreme Court). See also C. Del Anderson, *Guide to the Manuel Ruiz Papers, 1931-1986*, MANUEL RUIZ PAPERS, M0295, DEPT. OF SPECIAL COLLECTIONS, STANFORD UNIVERSITY LIBRARIES (1998), http://www.oac.cdlib.org/findaid/ark:/13030/tf9199p0dg/entire_text/ (noting Ruiz's date of birth but not death).

249. MUÑOZ, *supra* note 23, at 45; *One Hundred Years of Law and Ardor 1900-2000*, USC TROJAN FAMILY MAGAZINE (Summer 2000), http://www.usc.edu/dept/pubrel/trojan_family/summer00/Law/law_pg2.html; Anderson, *supra* note 248, at 3; Attorney Search – Manuel Ruiz, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/11771> (on file with author).

250. On July 20, 2015, the author conducted a WestlawNext search for "Manuel

1941, he helped to found and lead the Coordinating Council for Latin American Youth.²⁵¹ In that capacity, he supported the Sleepy Lagoon Defense Committee and protested the so-called Zoot Suit Riots of June 1943.²⁵² In recognition of his leadership and anti-discrimination advocacy, in 1943, Governor Earl Warren appointed Ruiz to the California Committee on Youth in Wartime (later the California Youth Committee).²⁵³ In 1963, he helped incorporate the Mexican American Political Association (MAPA),²⁵⁴ and the following year he was elected to serve as MAPA Legal Counsel.²⁵⁵ Active in the MAPA leadership, five years later, he nevertheless lost his campaign for MAPA President.²⁵⁶ In 1970, however, President Richard Nixon appointed Ruiz (who was a Republican) to the United States Commission on Civil Rights, which had just published its report, *Mexican Americans and the*

Ruiz, Jr.” and filtered for reported cases. The original search produced forty-seven cases and the filter resulted in forty-six. WestlawNext, <https://lawschool.westlaw.com/> (follow “WestlawNext” hyperlink; then search “Manual Ruiz, Jr.”; then click “Cases” and narrow by “Reported”).

251. See MARK BRILLIANT, *THE COLOR OF AMERICA HAS CHANGED: HOW RACIAL DIVERSITY SHAPED CIVIL RIGHTS REFORM IN CALIFORNIA 1941-1978*, at 82; BURT, *supra* note 232, at 41. See also Ariela J. Gross, “*The Caucasian Cloak*”: *Mexican Americans and the Politics of Whiteness in the Twentieth-Century Southwest*, 95 GEO. L.J. 337, 356–57 nn.105–07 (2007).

252. BRILLIANT, *supra* note 251, at 82; BURT, *supra* note 232, at 41–44. On the Sleepy Lagoon murder and the so-called Zoot Suit Riots, see generally LUIS ALVAREZ, *THE POWER OF THE ZOOT: YOUTH CULTURE AND RESISTANCE DURING WORLD WAR II* (2008); ROGER BRUNS, *ZOOT SUIT RIOTS* (2014); EDWARD J. ESCOBAR, *RACE, POLICE, AND THE MAKING OF A POLITICAL IDENTITY: MEXICAN AMERICANS AND THE LOS ANGELES POLICE DEPARTMENT, 1900-1945* (1999); MAURICIO, MAZÓN, *THE ZOOT-SUIT RIOTS: THE PSYCHOLOGY OF SYMBOLIC ANNIHILATION* (1988); EDUARDO OBREGÓN PAGÁN, *MURDER AT THE SLEEPY LAGOON: ZOOT SUITS, RACE, AND RIOT IN WARTIME L.A.* (2003); CATHERINE S. RAMÍREZ, *THE WOMAN IN THE ZOOT SUIT: GENDER, NATIONALISM, AND THE CULTURAL POLITICS OF MEMORY* (2009); MARK A. WEITZ, *THE SLEEPY LAGOON MURDER CASE: RACE DISCRIMINATION AND MEXICAN-AMERICAN RIGHTS* (2010); American Experience, *Zoot Suit Riots*, PBS (2001), <http://www.-pbs.org-/wgb-h/-ame-x/-zoot/index.html>.

253. BRILLIANT, *supra* note 251, at 82; Burt, *supra* note 232, at 47–48, 102; Anderson, *supra* note 248, at 3.

254. Anderson, *supra* note 248, at 3.

255. BURT, *supra* note 232, at 217.

256. *Id.* at 273.

Administration of Justice in the Southwest,²⁵⁷ and in 1971, Ruiz spoke at the MAPA installation and awards banquet.²⁵⁸ The following year, he self-published *Mexican American Legal Heritage in the Southwest*.²⁵⁹

Ruiz himself was not the first Mexican American attorney of California.²⁶⁰ Rather, Ruiz can be understood as one in a fictive genealogy of Mexican American lawyers of California. For example, Richard A. Ibañez (October 6, 1910 – November 30, 2007) graduated from Boalt Hall in 1936, joined the California Bar in November 1937, and served as a Los Angeles Superior Court judge from 1975 to 1994.²⁶¹ Enrique P. “Hank” López, believed to be the first Mexican American alumnus of Harvard Law School, graduated in 1948 and

257. Anderson, *supra* note 248, at 3. See also U.S. COMM’N ON CIVIL RIGHTS, MEXICAN AMERICANS & THE ADMINISTRATION OF JUSTICE IN THE SOUTHWEST (1970), <http://babel.hathitrust.org/cgi/pt?id=uiug.30112057601483;view=1up;seq=1>.

258. BURT, HISTORY OF MAPA, *supra* note 247, at 17.

259. MANUEL RUIZ, JR. MEXICAN AMERICAN LEGAL HERITAGE IN THE SOUTHWEST (1972, 2d ed. 1974). For further information about Ruiz, see María G. Mendoza, Manuel J. Ruiz, Jr.: The First Latino to Argue Before the United States Supreme Court (Mar. 2011) (unpublished manuscript), http://www.researchgate.net/publication/249789056_Manuel_J._Ruiz_Jr._The_First_Latino_to_Argue_Before_the_United_States_Supreme_Court.

260. See, e.g., BURT, *supra* note 232, at 31–32 (naming attorneys Ernesto R. Orfila and A.P. ‘Tony’ Entenza”). Entenza joined the California Bar in February 1922. Attorney Search – Entenza, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/8364> (on file with author). Orfila joined the California Bar in July 1918. Attorney Search – Orfila, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/577> (on file with author). Searching for “Orfila” in the California Bar website also produces a nineteenth century Mexican American attorney, Antonio Orfila, who joined the bar in October 1887. See *id.* As with all critical ethnic legal-histories, the roots of Mexican American lawyers transcend the twentieth century.

261. See BOALT HALL ALUMNI DIRECTORY, *supra* note 240, at 184; BURT, *supra* note 232, at 72–73; SÁNCHEZ, *supra* note 220, at 322 n.7; Attorney, Former Family Law Judge, L.A. TIMES (Jan. 25, 2008), <http://articles.latimes.com/2008/jan/25/local/me-passings25.S2>; Attorney Search – Richard Ibanez, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/15940> (on file with author). Ibañez may have been one of the first two Latino alumnus of Boalt Hall. See BOALT HALL PROFESSIONAL DIRECTORY, *supra* note 241, at 6, 15 (listing Ibañez and Augustus L. Castro as members of the Class of 1936).

was admitted to the California Bar in January 1949.²⁶² Carlos M. Terán was admitted to the bar in June 1949, appointed to the Los Angeles Municipal Court in 1957, and elevated by Governor Edmund G. “Pat” Brown, Sr. to the Los Angeles Superior Court in 1959.²⁶³ Arthur L. Alarcón (August 14, 1925 – January 28, 2015), the judge who presided over several of the Chicano Movement cases litigated by Oscar “Zeta” Acosta, earned his LL.B. in 1951 from the University of Southern California Law School and joined the California Bar in January 1952²⁶⁴ (Acosta himself joined the California Bar in June 1966).²⁶⁵ Louis García

262. BURT, HISTORY OF MAPA, *supra* note 247, at 4–5; Attorney Search – Henry Lopez, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/20558> (on file with author); Burt A. Folkart, *Enrique (Hank) Lopez; Attorney, Activist*, L.A. TIMES (Oct. 25, 1985), http://articles.latimes.com/1985-10-25/local/me-14459_1_lopez. Kenneth Burt names him “Henry ‘Hank’ Lopez.” BURT, HISTORY OF MAPA, *supra* note 247, at 4. His California Bar webpage lists him as “Henry Preston Lopez.” Attorney Search – Henry Lopez, *supra*. His obituary names him “Enrique (Hank) Lopez,” and that is the name under which he published. See, e.g., ENRIQUE HANK LOPEZ, THE HARVARD MYSTIQUE: THE POWER SYNDROME THAT AFFECTS OUR LIVES FROM SESAME STREET TO THE WHITE HOUSE (1979).

263. BURT, HISTORY OF MAPA, *supra* note 247, at 5; Attorney Search – Carlos Teran, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/21096> (on file with author); Monica Rodriguez, *Services for Retired Pomona Judge Carlos M. Teran Planned Friday*, CONTRA COSTA TIMES (June 18, 2009), http://www.contracostatimes.com/california/ci_12624944.

264. See Attorney Search – Arthur Alarcon, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/22743> (on file with author); Cal. App. Ct. Legacy Project, *Interviewee Biography: Justice Arthur L. Alarcón* (n.d.) (on file with author); Press Release, U.S. Courts for the Ninth Cir. Pub. Info. Office, Court of Appeals Mourns Passing of Senior Circuit Judge Arthur L. Alarcón (Jan. 29, 2015) (on file with author). Governor Edmund “Pat” Brown, Sr. appointed Alarcón to the Los Angeles Superior Court in 1964, where he served until 1978 when Governor Edmund “Jerry” Brown, Jr. appointed him to the California Court of Appeal for the Second Appellate District. *Id.* at 2. He served therein until 1979, when President Carter appointed him to the United States Court of Appeals for the Ninth Circuit, where he served until taking senior status in 1992. *Id.*

265. Attorney Search – Oscar Acosta, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/38731> (last visited Oct. 7, 2015). Accord STAVANS, *supra* note 22, at 73 (noting that Acosta passed the California Bar exam on his second attempt in June 1966). Although Acosta was declared legally dead in December 1986, Olivas, *supra* note 6, at 854 n.154, as of this writing no one has adequately notified the State Bar of California in order for Acosta’s California Bar webpage to reflect his

joined the California Bar in February 1953, was appointed by Governor Pat Brown to the Fair Employment Practices Commission, co-founded La Raza Lawyers (with Mario Obledo and Cruz Reynoso) in 1971, and later became presiding judge of the San Francisco Municipal Court.²⁶⁶ Leopoldo G. “Leo” Sanchez was admitted to the state bar in July 1954 and ran successfully against an incumbent judge to win a seat in the East Los Angeles Municipal Court in November 1960.²⁶⁷ Robert T. Baca graduated from the Loyola Law School and was admitted to the state bar in January 1956.²⁶⁸ After running unsuccessfully for public office in the 1960s, he became a municipal court judge in 1976 until Governor Jerry Brown appointed him to the superior court in 1979.²⁶⁹ One could go on, and indeed for the most part, the histories of California’s Mexican American and Chicana/o lawyers have yet to be written.²⁷⁰

death. Instead, his record of administrative actions shows that he was suspended for failure to pay bar member fees on Dec. 12, 1974.

266. BURT, HISTORY OF MAPA, *supra* note 247, at 10, 12, 20; *About Us*, SAN FRANCISCO LA RAZA LAWYERS, <http://larazalawyers.org/about-us/> (last visited Oct. 7, 2015); Attorney Search – Louis Garcia, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/23987> (on file with author). The organizers of La Raza Lawyers eventually launched state and national organizations, including California La Raza Lawyers Association and the Hispanic National Bar Association. HISPANIC NATIONAL BAR ASSOCIATION MEMBERSHIP DIRECTORY 1986 vi-vii [hereinafter HNBA DIRECTORY].

267. BURT, HISTORY OF MAPA, *supra* note 247, at 5; Attorney Search – Leo Sanchez, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/25510> (on file with author). Two years later he lost his election campaign for a seat on the Los Angeles Superior Court. BURT, *supra* note 232, at 7.

268. BURT, HISTORY OF MAPA, *supra* note 247, at 7 (noting Baca’s unsuccessful election campaign for the California Assembly); Attorney Search – Robert Baca, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/26672> (on file with author); Ruth Brown, *Longtime Kern County Judge Dies at 89*, BAKERSFIELD CALIFORNIAN (Nov. 4, 2014), <http://www.bakersfield.com/news/2014/11/05/longtime-kern-county-judge-dies-at-89.html>.

269. Brown, *supra* note 268.

270. While many histories have been written about Mexican American and Chicana/o communities, community organizations, labor organizing, political advocacy, and social movements in California, other states, and historic territories of the United States, these works typically only mention that a particular person was an attorney and rarely highlight how lawyers as a class contributed distinctively to those

To reorient on one of my concluding points: in his 1991 essay, Professor Olivas's case study on Oscar "Zeta" Acosta called the attention of legal scholars to this quixotic Chicano lawyer, who brazenly confronted the risks of representation faced by his Chicano Movement activist clients. Although most legal scholars did not pay heed, a few, including Richard Delgado and Jean Stefancic, carefully considered Olivas's treatment of Acosta, and apparently believed that Olivas's essay, and Acosta's example of "rebellious lawyering"²⁷¹ merited inclusion in several of their subsequent books.²⁷² A question not completely addressed by Olivas in 1991, however, is why did Acosta believe that he could prevail in this claim? Because of Ian F. Haney López's meticulous research, we now know that the *East L.A. Thirteen* motion to quash the indictment cited to *Hernandez v. Texas*, the 1954 United States Supreme Court case that extended

histories. See, e.g., BURT, *supra* note 232 (discussing the twentieth century origins of California Latino politics in early-to-mid-century Mexican American community organizing); BURT, HISTORY OF MAPA, *supra* note 247 (discussing the founders and organizers of the Mexican American Political Organization from its postwar predecessor organizations like the Community Service Organization and California Democratic Council through 1982). See also GARCÍA, *supra* note 220; GUTIÉRREZ, *supra* note 220; ROSALES, *supra* note 220; SÁNCHEZ, *supra* note 220. One approach to this project of ethnic legal history would be to determine the earliest attorneys and judges of Mexican American heritage in the several states of the Southwest and to explore the lawyers' organizations that they created. Michael Olivas, among others, has conducted groundbreaking work in that respect regarding Mexican American attorneys in Texas. See, e.g., sources cited, *supra* note 196; see also Michael A. Olivas, *Reflections upon Old Books, Reading Rooms, and Making History*, 76 UMKC L. REV. 811 (2008). Also, in addition to cross-referencing law school alumni directories with extant histories of Mexican Americans and Chicanas/os, one might review sources like national organizations' directories, HNBA DIRECTORY, *supra* note 266 (the first membership directory of the Hispanic National Bar Association); LA RAZA LAWYERS OF CALIFORNIA 1983, at 1 ("This is the first statewide directory of Raza attorneys."); *National Roster of Spanish Surnamed Elected Officials* (Frank C. Lemus ed., 1973), reprinted from 5 AZTLÁN-CHICANO J. OF THE SOC. SCIENCES AND THE ARTS 313, 322-23 (1973) (listing thirteen judges of various California courts and one county clerk under the headings "California - State Officials - Judicial Department").

271. On Gerald P. López's theory of rebellious lawyering, see sources cited, *supra* note 151.

272. See sources cited, *supra* notes 156-57.

constitutional equal protection to Mexican Americans.²⁷³ But how did Acosta come to know of *Hernandez*?

In studying Acosta's lawyering under Haney López in 2003 and subsequently teaching undergraduate courses of Ethnic Studies that discussed his book, *Racism on Trial*, I came to believe that Acosta's knowledge of *Hernandez* likely derived from his historical proximity to the case. Born in El Paso, Texas on April 8, 1935,²⁷⁴ Acosta joined the California Bar in June 1966,²⁷⁵ so it seemed more likely than not that he knew about the triumph of *Hernandez* through the *Zeitgeist* in which he lived.²⁷⁶ Returning to the subject a dozen years later, however, I found myself unsatisfied with my prior notion of cultural diffusion and intrigued that Acosta's public writings never refer expressly to *Hernandez*.²⁷⁷

Consider that in Acosta's 1971 autobiographical essay, he credited the idea of the grand jury challenge to "an acid experience."²⁷⁸ Also, in the opening of his essay, "Challenging Racial

273. 347 U.S. 475 (1954); HANEY LÓPEZ, *supra* note 23, at 42, 174–78, 264 n.6. Although the motions cited to *Hernandez*, the appellate opinion in *East L.A. Thirteen* did not. See *Castro*, 88 Cal. Rptr. 500. (The appellate opinion in *Biltmore Six*, however, did cite to *Hernandez*. *Montez*, 88 Cal. Rptr. 736). Olivas later explored *Hernandez* in great detail. See e.g., "COLORED MEN" AND "HOMBRES AQUÍ", *supra* note 2, at *passim*; Olivas, *supra* note 1, at 128. As Olivas explains, he did not know of *Hernandez* until a chance conversation alerted him to the importance of the case and the instrumental role that (by then Judge) James De Anda had played in it. See "COLORED MEN" AND "HOMBRES AQUÍ", *supra* note 2, at xvii; Olivas, *Accidental Historian*, *supra* note 2, at 19–22. His first article citing to *Hernandez* was published in 1994. Olivas, *supra* note 1, at 128.

274. HANEY LÓPEZ, *supra* note 23, at 28; STAVANS, *supra* note 22, at 125; UNCOLLECTED WORKS, *supra* note 22, at xix.

275. See sources cited, *supra* note 264.

276. See HANEY LÓPEZ, *supra* note 23, at 275 n.13 (discussing California legislative proceedings questioning the grand jury selection process in 1963 and 1964).

277. See, e.g., HANEY LÓPEZ, *supra* note 23, at 174–76 (discussing Acosta's journalism on the grand jury challenge); STAVANS, *supra* note 22, at 79–82 (discussing Acosta's 1969 essay, "Challenging Racial Exclusion on the Grand Jury"); UNCOLLECTED WORKS, *supra* note 22, at xiv, 13–14, 281–89 (commenting on Acosta's views on grand jury discrimination and reproducing the essay that he wrote about racial exclusion from grand juries).

278. UNCOLLECTED WORKS, *supra* note 22, at 14 ("Most of the big ideas I've gotten for my lawyer work have usually come when I am stoned. Like the Grand Jury challenge was the result of an acid experience. A lot of the tactics I employ I get the

Exclusion on the Grand Jury: The East L.A. 13 vs. the L.A. Superior Court," which Ilan Stavans states was written in 1969 and published "in a small law school news service, *Caveat*,"²⁷⁹ Acosta began by asserting that no one in California had successfully quashed an indictment based on a challenge to the composition of the grand jury.²⁸⁰ He then claimed:

The East L.A. 13 did what had not been done by any Mexican American: They challenged the jurisdictional power of the indicting body (the Grand Jury) on grounds of its discriminatory selection and resultant unrepresentative character by the very judicial officers, the Superior Court judges, who would not [sic] inquire into their allegedly criminal conduct.²⁸¹

Acosta continued:

Laying the groundwork for appeals to the Supreme Court, they retained expert witnesses and used cardboard boxes full of documentary and statistical evidence to legally establish their identity as a people separate and distinct from the majority, thereby meeting the constitutional requirement of "classification" which is a pre-condition to a demand for consideration and representation from

ideas for when I am stoned, which is not to say that I wouldn't get them if I wasn't stoned. A lot of my creativity has sprung from my use of these psychedelic drugs."). Ilan Stavans dates the autobiographical essay as "written circa 1971." *Id.* at xii.

279. See STAVANS, *supra* note 22, at 80; UNCOLLECTED WORKS, *supra* note 22, at xiv. Haney López provides another citation for Acosta's essay on grand jury exclusion that Stavans reprinted: Oscar Acosta, *The East L.A. 13 vs. The L.A. Superior Court*, 3 EL GRITO 12 (1970). HANEY LÓPEZ, *supra* note 23, at 288 n.1.

280. UNCOLLECTED WORKS, *supra* note 22, at 281. In making this claim, Acosta referenced several contemporaneous cases, which he asserted featured unsuccessful motions to quash, involving Black Panther Party leader Huey Newton and the assassin of Robert F. Kennedy, Sirhan Sirhan. *Id.* Haney López provides the case citations as *People v. Newton*, 87 Cal. Rptr. 394 (Cal. App. 1st Dist. 1970), and *People v. Sirhan*, 497 P.2d 1121 (Cal. 1972). HANEY LÓPEZ, *supra* note 23, at 274 n.8.

281. UNCOLLECTED WORKS, *supra* note 22, at 283.

within their group upon the Grand Jury.²⁸²

After eight paragraphs in which Acosta outlined his challenge to the Los Angeles County grand jury system,²⁸³ he then cited to the Civil Rights Act of 1875, an unnamed 1880 Supreme Court opinion, a 1966 Fifth Circuit opinion, *Brooks v. Beto*, and a 1940 Supreme Court opinion, *Smith v. Texas*.²⁸⁴ Nowhere does he name *Hernandez v. Texas*.

How should legal scholars interpret Acosta's failure to publicly credit the Mexican American lawyers who litigated *Hernandez*? Initially, I felt tempted to conclude that Acosta had dissimulated out of seemingly characteristic flamboyance and hunger for the limelight. I then considered if it was simply an error of omission, but quickly discarded this hypothesis. Before identifying the correct citation for *Smith v. State of Texas*,²⁸⁵ I wondered if Acosta might have fabricated *Smith* in order to create a cipher for *Hernandez*.²⁸⁶ Ultimately, however, I found it more productive to worry less about whether Acosta developed the grand jury strategy himself, in order to consider how other members of the legal team contributed to the winning strategies.

This hypothesis bears exploration because the legal team in *East*

282. UNCOLLECTED WORKS, *supra* note 22, at 283.

283. *Id.* at 283–85.

284. See UNCOLLECTED WORKS, *supra* note 22, at 286–88. Either Acosta in his manuscript, the essay's original publisher, or Stavans in his reprint mistook the *Smith* citation as "311 U.S. 218." UNCOLLECTED WORKS, *supra* note 22, at 287. The correct citation is *Smith v. State of Texas*, 311 U.S. 128 (1940). In contrast, *Brooks v. Beto*, 366 F.2d 1 (1966), from which Acosta quotes significantly in the essay, bears its correct citation.

285. Using Acosta's citation, "311 U.S. 218" the author's WestlawNext search conducted on July 14, 2015 brought up the case, *Schriber-Schroth Co. v. Cleveland Trust Co.*, 311 U.S. 211 (1940). Searching for "Smith v. Texas" throughout the year 1940 in the WestlawNext database of U.S. Supreme Court opinions produced a single hit for a two-sentence long opinion. *Smith v. State of Texas*, 309 U.S. 651 (1940) ("The motion for leave to proceed in forma pauperis is granted. The petition for writ of certiorari to the Court of Criminal Appeals of the State of Texas is granted."). Broadening the search to "Smith v. State of Texas" finally identified the correct case, 311 U.S. 128 (1940), and suggested that the error was simply a transposition.

286. The *East L.A. Thirteen* motion to quash cited to *Hernandez*. HANEY LÓPEZ, *supra* note 23, at 264 n.6. Acosta's citation to *Brooks v. Beto*, in his racial exclusion essay was accurate, and the case cited multiple times to *Hernandez*. See, e.g., *Brooks*, 366 F.2d at 4 n.4. *Brooks*, however, never mentioned the word "Mexican." See *id.*

L.A. Thirteen was numerous and included attorneys substantially more experienced than Acosta, including individuals who were affiliated with the American Civil Liberties Union, the National Lawyers Guild, and the nascent Chicano Legal Defense Committee.²⁸⁷ In particular, future research into *East L.A. Thirteen*, *Biltmore Six*, and the other Chicano Movement cases should explore the dynamics of the legal teams, especially the influence of Hugh R. Manes,²⁸⁸ Fred

287. See HANEY LÓPEZ, *supra* note 23, at 30–31, 260 n.84 (“The National Lawyers Guild supplied Neil Herring and Samuel Rosenwein, and A.L. Wirin and Fred Okrand from the ACLU also greatly helped out Other attorneys involved in the Chicano cases included Herman Sillas, Paul Posner, Hugh Manes, Al Michaelson, Ralph Segura, Joe Ortega, Elnora Livezey and Joan Anderson) (citations omitted). See also GARCÍA & CASTRO, *supra* note 23, at 213, 354 n.30 (discussing the Chicano Legal Defense Committee and Chicano Legal Defense Fund) (citations omitted).

288. Hugh R. Manes earned his law degree from Northwestern University in 1952 and joined the California Bar in July 1953. Attorney Search—Hugh R. Manes, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/24354> (on file with author). He began his law practice at Wirin, Rissman & Okrand and dedicated his career to litigating against police misconduct, trying over 400 cases in his career. Elaine Woo, *Hugh R. Manes Dies at 84; Lawyer Fought for Victims of Police Misconduct*, L.A. TIMES (June 18, 2009), <http://www.latimes.com/local/obituaries/la-me-hugh-manes18-2009jun18-story.html>. See also Hugh R. Manes Papers (Collection 1854), UCLA LIBR. SPECIAL COLLECTIONS, CHARLES E. YOUNG RES. LIBR. (2010), available at http://www.oac.cdlib.org/findaid/ark:/13030/kt6199s3dp/entire_text/. While he was not listed on the reported opinion for *East L.A. Thirteen*, he was listed as an attorney of record in the *Biltmore Six*, and Haney López identifies Manes as one of the attorneys with whom he spoke while researching for his book. *Montez*, 88 Cal. Rptr. 736; HANEY LÓPEZ, *supra* note 23, at 313.

Okrand,²⁸⁹ Herman Sillas,²⁹⁰ and A.L. Wirin.²⁹¹

289. Fred Okrand earned his law degree at USC in 1940 and joined the California Bar in December of that year. *The ACLU of Southern California Mourns the Loss of Fred Okrand, Legal Director Emeritus*, ACLU OF S. CAL. (Mar. 19, 2002), <https://www.aclusocal.org/the-aclu-of-southern-california-mourns-the-loss-of-fred-okrand-legal-director-emeritus/> [hereinafter *ACLU Mourns*]; Attorney Search – Fred Okrand, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/17351> (on file with author). He began his legal career at Gallagher & Wirin but left with Al Wirin to affiliate with the ACLU of Southern California as a volunteer attorney after the United States entered World War II and began to intern Japanese Americans. Elaine Woo, *Fred Okrand, 84; Fought Key ACLU Battles*, L.A. TIMES (Mar. 21, 2002), <http://articles.latimes.com/2002/mar/21/local/me-okrand21>. In 1972, he became the ACLU of Southern California's first legal director. *ACLU Mourns*, *supra*; *Longtime Civil Liberties Lawyer Fred Okrand Dies at 84*, METRO. NEWS-ENTER. (Mar. 21, 2002), <http://www.metnews.com/articles/okra032102.htm>. Thus, as Haney López notes, Okrand was affiliated with the ACLU during *East L.A. Thirteen*. HANEY LÓPEZ, *supra* note 23, at 260 n.84. In 1984, Okrand retired from his position and became Legal Director Emeritus of the ACLU Foundation of Southern California. *ACLU Mourns*, *supra*. According to the author's July 23, 2015, search for "Fred Okrand," WestlawNext lists him as an attorney of record in 528 reported judicial opinions. WESTLAW, <https://lawschool.westlaw.com/> (follow "WestlawNext" hyperlink; then search "Fred Okrand" (with quotation marks) and select "Cases"; then narrow by "Reported").

290. Herman Sillas graduated from the UCLA School of Law and joined the California Bar in January 1960. Herman Sillas, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/30281> (last visited Oct. 8, 2015); *Herman's Bio*, <http://www.hermansillas.com/finearts.home-bio.asp> (last visited Oct. 8, 2015); *Law Office of Herman Sillas*, <http://www.hermansillas.com/firm.html> (last visited Oct. 8, 2015). After the Watts Riots of 1965, Sillas joined the Los Angeles County Human Relations Commission, and the following year he helped organize the Association of Mexican American Educators. Kenya Davis-Hayes, *Herman Sillas' Art and Activism*, KCET L.A. (Oct. 22, 2013), <http://www.kcet.org/arts/artbound/counties/los-angeles/herman-sillas-chicano-activist.html>. In 1968, Sal Castro hired Sillas to represent him in *East L.A. Thirteen*, and in the same period, Sillas helped to found MALDEF and served on its board of directors. GARCÍA & CASTRO, *supra* note 23, at 213, 228-31, 248; Davis-Hayes, *supra*; *Herman's Bio*, *supra*; *Law Office of Herman Sillas*, *supra*; Theresa Mesa, *Research Guide to the Records of Mexican American Legal Defense and Educational Fund, 1968-1983*, SPECIAL COLLECTIONS M0673, DEPT. OF SPECIAL COLLECTIONS, STANFORD UNIV. LIBRARIES, 229, 257, 1209-10 (1997, 2004), <http://oac.cdlib.org/findaid/ark:/13030/tf9f59p0b2>; Reynaldo A. Valencia, *What If You Were First and No One Cared: The Appointment of Alberto Gonzales and Coalition Building Between Latinos and Communities of Color*, 12 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 21, 30 (2005). In 1975, Governor Jerry Brown appointed Sillas to serve as Director of California's Department of Motor Vehicles, and in 1977, President Jimmy Carter appointed him to serve as United States Attorney for the Eastern District of California, where he

More experienced than Acosta, the court records leave traces of

served until October 1980. *Herman's Bio*, *supra*; *Law Office of Herman Sillas*, *supra*. Today, he maintains a law practice in San Clemente, California, publishes a monthly column in the local newspaper, and maintains a career as a fine artist. *See generally View From the Pier*, <http://www.hermansillas.com/pier.asp> (last visited Oct. 8, 2015).

291. Born in Russia in 1901, A.L. Wirin immigrated to the United States as an infant. 11 REPORT OF THE SENATE FACT-FINDING SUBCOMMITTEE ON UN-AMERICAN ACTIVITIES IN CALIFORNIA 169 (1961), <http://content.cdlib.org/view?docId=kt396n99b3&query=&brand=calisphere> [hereinafter UN-AMERICAN ACTIVITIES IN CALIFORNIA]; A.L. Wirin, DENSHO ENCYCLOPEDIA, <http://encyclopedia.densho.org/A.L.%20Wirin/> (last visited Oct. 8, 2015); Paul Weeks, *Lawyer Fought for All Rights*, RECORDNET.COM (May 1, 2007), http://www.recordnet.com/apps/pbcs.dll/article?AID=/20070501/A_LIFE07/705010315/-1/A_LIFE07. Wirin "attended primary schools in Massachusetts, majored in philosophy and economics at Harvard, [and] received his law degree from Boston College. After graduating, he engaged for a short while in social work both in Boston and in Brooklyn, New York, then came to Los Angeles to practice his profession." UN-AMERICAN ACTIVITIES IN CALIFORNIA, *supra*, at 169. Wirin joined the California Bar in July 1930, the ACLU of Southern California hired him as its first civil rights lawyer in 1931, and he became active in the National Lawyers Guild. UN-AMERICAN ACTIVITIES IN CALIFORNIA, *supra*, at 169-73; Attorney Search - A. L. Wirin, STATE BAR OF CAL., <http://members.calbar.ca.gov/fal/Member/Detail/11892> (on file with author); *From 1923 to 1940*, ACLU OF S. CAL., <https://www.aclusocal.org/our-history/from-1923-to-1940/> (last visited Oct. 8, 2015). Socially active over a legal career spanning more than four decades, he died in 1978. A.L. Wirin, *ACLU Counsel*, ST. PETERSBURG TIMES (Feb. 6, 1978), <https://news.google.com/newspapers?id=cgpZAAAAIIBAJ&sjid=mlkDAAAAIIBAJ&pg=6725%2C5048999>. According to the author's WestlawNext search of July 23, 2015, "A. L. Wirin" is listed in 558 reported judicial opinions, ranging from 1931 through 1977, including 176 cases with the U.S. Supreme Court. WESTLAW, <https://lawschool.westlaw.com/> (follow "WestlawNext" hyperlink; then search "A. L. Wirin" (with quotation marks) and select "Cases"; then narrow by "Reported"). Supreme Court cases in which he was an attorney of record include, *inter alia*: *Yasui v. United States*, 320 U.S. 115 (1944) (representing Minoru Yasui); earlier and later phases of *Korematsu v. United States*, 319 U.S. 432 (1943) (representing Fred Toyosaburo Korematsu), 324 U.S. 885 (1945) (petition for rehearing denied) (representing amicus curiae Japanese American Citizens League); *Oyama v. State of California*, 332 U.S. 663 (1948) (representing Oyama petitioners). Wirin also supported the plaintiffs in *Mendez v. Westminster*, 161 F.2d 774 (1947) (representing Japanese-American Citizens League) and other Mexican American school desegregation cases. *See* Michael A. Olivas, *Review Essay—The Arc of Triumph and the Agony of Defeat: Mexican Americans and the Law*, 60 J. LEGAL EDUC. 354, 361-62 (2010); Jeanne M. Powers & Lirio Patton, *Between Mendez and Brown: Gonzales v. Sheely (1951) and the Legal Campaign Against Segregation*, 33 LAW & SOC. INQUIRY 127, *passim* (2008).

the senior lawyers' influence,²⁹² especially in *East L.A. Thirteen*, and one can imagine their spirited discussions regarding the feasibility of the grand jury challenge and how they ultimately determined that Acosta should implement it. Acosta himself questioned thirty-three judges on the stand in *East L.A. Thirteen* before the First Amendment challenge ultimately prevailed on appeal.²⁹³ He continued the strategy in *Biltmore Six* with the support of the elder Manes, but apparently not with the support of Okrand and Wirin (the ACLU attorneys) or Sillas (Sal Castro's attorney).²⁹⁴ Thankfully, Haney López has deposited the court transcripts, legal briefs, and police records that his research uncovered with the Oscar Zeta Acosta Papers at the University of California, Santa Barbara.²⁹⁵ Thus, it remains for an enterprising scholar to braid together the histories of the Chicano Movement legal teams into a multi-colored history of how lawyers of various racialized ethnic identities worked together across several generational cohorts to protect the freedom of the Chicano Movement activists whom Acosta is credited for representing.²⁹⁶

For his part, contemporaneous with the proceedings, Acosta concluded his essay on grand jury racial exclusion by lamenting why lawyers had not previously raised the issue of racial exclusion from the grand jury as a defense to criminal indictment. He asserted that this failure, "unfortunately reflects upon the legal profession."²⁹⁷ He went on:

292. See HANEY LÓPEZ, *supra* note 23, at 260 n.84; *Compare Castro*, 88 Cal. Rptr. 500, *with Montez*, 88 Cal. Rptr. 736.

293. HANEY LÓPEZ, *supra* note 23, at 313; Haney López, *supra* note 153, at 1722 n.8; see also *id.* at 1845–83 (excerpting the transcript of Acosta's examination of the judges in *East L.A. Thirteen*).

294. See *Montez*, 88 Cal. Rptr. at 737 (listing the petitioners' attorneys as "Oscar Zeta Acosta, Neil M. Herring, Margolis, McTernan, Smith, Scope & Herring and Hugh R. Manes").

295. HANEY LÓPEZ, *supra* note 153, at 1845. See also Güereña, *supra* note 169 (Acosta Papers finding aid).

296. See, e.g., Genevieve Carpio, *Unexpected Allies: David C. Marcus and his Impact on the Advancement of Civil Rights in the Mexican-American Legal Landscape of Southern California*, in BEYOND ALLIANCES: THE JEWISH ROLE IN RESHAPING THE RACIAL LANDSCAPE IN SOUTHERN CALIFORNIA 1 (George J. Sanchez ed., 2012).

297. UNCOLLECTED WORKS, *supra* note 22, at 288.

That it requires imagination and hard work is understandably a contributing factor; but perhaps the most compelling reason for their failure to raise the issue is that ultimately what the lawyer says in such a motion is an indictment of the profession which he professes and a castigation of the society to which he belongs.²⁹⁸

In my view, Acosta's elision of the source of the brilliant defense strategy that he personally implemented on an unprecedented scale is less important than the historical fact, recorded in the motion to quash, that he and his colleagues relied on the precedent established by an earlier team of Mexican American lawyers, who, after several attempts, persuaded the Supreme Court to extend equal protection to Mexican Americans in 1954.²⁹⁹ Because of the excellent scholarship of Professor Olivas and other socio-legal scholars, a recounting of *Hernandez* here is unnecessary.³⁰⁰ Rather, I conclude this Article by highlighting the historical context through which Acosta, and senior lawyers, knew of and relied upon *Hernandez*, and I argue for the importance of researching the oft-obscure, yet nonetheless concrete connections and personal relationships that constitute critical aspects of what I term *la gran lucha*.

Conclusion

While predictably subject to criticism as bombastic or otherwise pretentious, I mean for the concept of *la gran lucha* to contextualize and highlight the centurial, interracial, and transnational social struggles of myriad peoples. In this interpretation of history, Chicana/o and other Mexican American attorneys, pre- and postwar, in California, Texas, and elsewhere, contributed their partial histories of socio-legal struggle, and they often collaborated with attorneys,

298. UNCOLLECTED WORKS, *supra* note 22, at 288.

299. *Hernandez*, 347 U.S. 475.

300. See, e.g., "COLORED MEN" AND "HOMBRES AQUÍ," *supra* note 2 (publishing new research on *Hernandez v. Texas* following a symposium commemorating its fiftieth anniversary).

and others, of diverse racialized and ethnic identities. These critical ethnic legal histories deserve to be carefully researched and accurately recounted.

While many of these histories have yet to be told, in this, as in so many respects, Michael A. Olivas has charted paths for others to explore and planted seeds for others to cultivate.³⁰¹ Thus, I understand Olivas to act within a fictive genealogy of Chicana/o, Mexican American and other Latina/o lawyers who seek to use the law to transform the socio-legal conditions that criminalize, impoverish, and otherwise marginalize our communities. The *Hernandez* lawyers are in this lineage—Carlos Cadena, James De Anda, Gustavo “Gus” García, and Johnny Herrera—and beyond them stand the first three Mexican American lawyers of Texas: J.T. Canales, Manuel C. Gonzáles, and Alonso S. Perales.³⁰² Before and after the first lawyers of Texas, perhaps waiting patiently in the shadows, there are many others whose histories have yet to be unearthed and remembered.³⁰³ In their own times, in myriad ways, these people and

301. See “COLORED MEN” AND “HOMBRES AQUÍ,” *supra* note 2; IN DEFENSE OF MY PEOPLE, *supra* note 196; Olivas, *supra* note 1; Olivas, *Trial of the Century*, *supra* note 2; Olivas, *Accidental Historian*, *supra* note 2; Olivas, *supra* note 6; Olivas, *supra* note 48; Olivas, *supra* note 196; Olivas, *supra* note 270; Olivas, *supra* note 291.

302. See “COLORED MEN” AND “HOMBRES AQUÍ,” *supra* note 2, at *passim* (discussing the rise of Mexican American lawyering through an examination of the four *Hernandez* lawyers); IN DEFENSE OF MY PEOPLE, *supra* note 196, at xi-xii (discussing the first three Mexican American lawyers of Texas—J.T. Canales, who graduated from the University of Michigan Law School in 1899, Manuel C. Gonzáles, who attended law school at St. Louis University and graduated from the University of Texas Law School in 1924, and Alonso S. Perales who completed law school in 1925 at the school that later became George Washington University); Olivas, *supra* note 291, at 364–65 (discussing the four *Hernandez* lawyers and the first three Mexican American lawyers of Texas); Lupe S. Salinas, *Gus Garcia and Thurgood Marshall: Two Legal Giants Fighting for Justice*, 28 T. MARSHALL L. REV. 145 (2003) (discussing the *Hernandez* lawyers).

303. See, e.g., Olivas, *supra* note 270, at 815–18 (discussing the Rev. Antonio José Martínez y Santistevan (1793 to 1867), who trained as a priest and lawyer in Durango (the then-provincial capital of Nueva Vizcaya, New Spain) before he founded a small seminary at Taos in 1833, where he printed books of formal logic as well as legal treatises, and which he converted into a law school when the United States occupied what became the territory of New Mexico in 1848).

countless others confronted the risks of representation. Learning about their experiences, successes, and failures can provide new generational cohorts with valuable lessons in how to transform socio-legal conditions so that more people may suffer less injustice under the color of law.³⁰⁴

As I have written elsewhere, entire fields of critical ethnic legal histories lie fallow, awaiting scholars and students whose careful collaboration can make their memories green.³⁰⁵ Through such work we can help advance *la gran lucha*. By educating ourselves, newer generations of lawyers, and other legal workers who care for our diverse communities' intertwined destinies, we can contest today's *revanchism* in the United States and beyond, so that all oppressive authority succumbs to the rule of law.³⁰⁶

Con safos.

304. E.g., BURT, HISTORY OF MAPA, *supra* note 247, at 2 ("This history [of the Mexican American Political Association] serves as a guide for the leaders who are yet to surface. It was written so that mistakes can be avoided, and the positive can be expanded upon with new ideas, creating the potential for *betterment*.").

305. See González, *supra* note 7, at 1012, 1021–22 n.82, 1030, 1048, 1058–59, 1061–62 (discussing various aspects of critical ethnic legal histories).

306. On *revanchism* in the United States, see SMITH, *supra* note 194, at 44–47; González, *supra* note 194, at 235–36, 257–59, 279–80. See also Valdes, *supra* note 194, at *passim* (discussing the judicial backlash of *kulturkampf* politics). On the notion of authority under the rule of law, see LINEBAUGH, *supra* note 109, at 17, 212–13.

Appendix 1. Citing References to Michael A. Olivas, “Breaking the Law” on Principle.³⁰⁷

	Author	Title	Citation	Year
1.	Elizabeth Kay Harris	<i>Comment, Economic Refugees: Unprotected in the United States by Virtue of an Inaccurate Label</i>	9 AM. U.J. INT’L L. & POL’Y 269, 301 n.188, 304 n.203	1993
2.	Kevin R. Johnson	<i>Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement</i>	BYU. L. REV. 1139, 1215 n.302	1993
3.	Jonathan O. Hafen	<i>Children’s Rights And Legal Representation—The Proper Roles of Children, Parents, and Attorneys</i>	7 NOTRE DAME J.L. ETHICS & PUB. POL’Y 423, 424 n.4, 442 n.77	1993
4.	Richard Delgado & Jean Stefancic	<i>Critical Race Theory: An Annotated Bibliography</i>	79 VA. L. REV. 461, 503	1993
5.	Harold Hingju Koh	<i>America’s Offshore Refugee Camps</i>	29 U. RICH. L. REV. 139, 140 n.4	1994

307. This table derives from a WestlawNext search of “Citing References” to Olivas, *supra* note 6, and is provided for readers interested in the twenty-four law review publications that cited to his essay from 1993 to 2013. WESTLAW, <https://lawschool.westlaw.com/> (follow “WestlawNext” hyperlink; then follow “Secondary Sources” hyperlink; then select “Law Reviews & Journals” and search “52 U. Pitt. L. Rev. 815”; then select “Citing References” tab).

6.	Margaret H. Taylor	<i>Detained Aliens Challenging Conditions Of Confinement And The Porous Border of The Plenary Power Doctrine</i>	22 HASTINGS CONST. L.Q. 1087, 1113 n.126, 1115 n.139, 1125 n.189	1995
7.	Kevin R. Johnson	<i>Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century</i>	8 LA RAZA L.J. 42, 49 n.34, 50 n.36	1995
8.	Gail Quick Goeke	<i>Substantive and Procedural Due Process for Unaccompanied Alien Juveniles</i>	60 MO. L. REV. 221, 233 n.91	1995
9.	Richard Delgado	<i>Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary</i>	75 TEX. L. REV. 1181, 1191 n.60	1997
10.	Kevin R. Johnson & Amanda Perez	<i>Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory</i>	51 SMU L. REV. 1423, 1427 n.19, 1458 n.121	1998
11.	Kevin R. Johnson & George A. Martínez	<i>Crossover Dreams: The Roots of Latcrit Theory in Chicana/o Studies Activism and Scholarship</i>	53 U. MIAMI L. REV. 1143, 1151 nn.54 & 57	1999
12.	Kevin R. Johnson	<i>Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, And the Legal Indifference of the Race Critique</i>	2000 U. ILL. L. REV. 525, 532 n.31, 553 n.146	2000

13.	Michael A. Olivas	<i>Immigration Law Teaching and Scholarship in the Ivory Tower: A Response to Race Matters</i>	2000 U. ILL. L. REV. 613, 620 n.31, 637 nn.119 & 122	2000
14.	Antoinette Sedillo Lopez	<i>Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training</i>	7 CLINICAL L. REV. 307, 324 n.94	2001
15.	Sharon Finkel	<i>Comment, Voice of Justice: Promoting Fairness through Appointed Counsel for Immigrant Children</i>	17 N.Y.L. SCH. J. HUM. RTS. 1105, 1108 nn.20 & 21	2001
16.	Jerome McCristal Culp, Jr.	<i>Seventh Aspect of Self-Hatred: Race, Latcrit, And Fighting the Status Quo</i>	55 FLA. L. REV. 425, 437 n.19	2003
17.	Michelle Rae Pinzon	<i>Was the Supreme Court Right? A Closer Look at the True Nature of Removal Proceedings in the 21st Century</i>	16 N.Y. INT'L L. REV. 29, 62 n.224	2003
18.	Claire L. Workman	<i>Note, Kids Are People Too: Empowering Unaccompanied Minor Aliens Through Legislative Reform</i>	3 WASH. U. GLOBAL STUD. L. REV. 223, 245 nn.141 & 142, 246 n.144	2004
19	Luke Shulman-Ryan	<i>Note, Evidence - the Motion in Limine And the Marketplace of Ideas: Advocating for the Availability of the Necessity Defense for Some of the Bay State's Civilly Disobedient</i>	27 W. NEW ENG. L. REV. 299, 364 n.447	2005

20	Lisa A. Cahan	<i>Note, Constitutional Protections of Aliens: A Call for Action to Provide Adequate Health Care for Immigration Detainees</i>	3 J. HEALTH & BIOMEDICAL L. 343, 366 nn.97 & 98	2007
21.	Kevin R. Johnson	<i>Ten Guiding Principles for Truly Comprehensive Immigration Reform: A Blueprint</i>	55 WAYNE L. REV. 1599, 1606 n.22, 1620 n.101	2009
22.	Kevin R. Johnson	<i>How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce And Whren v. United States And the Need for Truly Rebellious Lawyering</i>	98 GEO. L.J. 1005, 1008 n.6	2010
23.	Keith Aoki & John Shuford	<i>Welcome to Amerizona — Immigrants Out!: Assessing “Dystopian Dreams” And “Usable Futures” Of Immigration Reform, And Considering Whether “Immigration Regionalism Is An Idea Whose Time Has Come</i>	38 FORDHAM URB. L.J. 1, 21 n.67	2010
24.	Marjorie Florestal	<i>A Tale of Two Compadres: Teaching International Trade And Development Across Cultures</i>	26 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 33, 59 n.118	2013